8-16-90
Vol. 55 No. 159

federal register

Thursday
August 16, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

8-16-90
Vol. 55 No. 159
Pages 33533-33638

federal register

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August 16, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-90-072]

Temporary Drawbridge Operation Regulations; Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of Connecticut Department of Transportation (CONN DOT), the Coast Guard is issuing temporary regulations governing the U.S. Route 1 drawbridge over Mystic River, at mile 2.8, at Mystic, Connecticut, in order to evaluate suggested changes. The temporary regulations would eliminate the 12:15 p.m. opening, Monday through Friday, for vessels while continuing the other hourly openings at quarter past the hour, from 7:15 a.m. to 7:15 p.m. The regulation will be in effect for 40 days from 13 August through 21 September 1990. This temporary regulation is being made to examine the effect on pedestrian, vehicular and marine traffic during the above period and provides for openings in emergency situations. This action should accommodate the needs of vehicular and pedestrian traffic, while providing for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary regulation becomes effective 13 August 1990.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District (212) 668-7170.

SUPPLEMENTARY INFORMATION: On June 19, 1990, the Coast Guard published a proposed temporary rule (55 FR 25068) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1-719 dated June 4, 1990. In each notice, interested persons were given until June 22, 1990, to submit comments. A Notice of Proposed Rulemaking and Public Hearing on proposed regulations appears in the proposed rulemaking section of this **Federal Register** as docket number (CGD1-90-143).

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, Project Attorney.

Discussion of Comments

37 responses, 24 favoring, and 11 opposing the elimination of the 12:15 opening along with two respondents offering no opinion, were received to the public notice. The favoring respondents all cited the inconvenience caused by the bridge opening and the congestion of pedestrian and vehicular traffic during the noon time. Of the 24 favoring respondents, 17 were either owners of a business or were employees in Mystic, Connecticut. Of the remaining seven favorable respondents, four were residents, two were boaters and one a local minister. Of the 11 opposing respondents, nine were marine interests (commercial and recreational), and two residents. Prevailing currents, tidal flow, and moderate winds require vessel operators to constantly guard against collisions with other vessels while waiting to pass through the bridge. The bridge in the closed position only provides a vertical clearance of four feet, at mean high water. The clearance is inadequate and can only accommodate the smallest vessels. The area below the highway bridge is narrow and restrictive with a full compliment of vessels moored on both sides of the waterway close to the channel. Prevailing currents, tidal flow and moderate breezes require continual vigilance by vessels waiting to avoid collisions. Therefore, any reduction in openings could effect the safe transit of vessels through the bridge and could require increased fuel consumption. A proposal to reduce the length of the trial period temporary regulation from 60 to 30 days was recommended because of the safety concerns. Mystic Seaport and Voyager Cruises requested that provisions be made for commercial vessels opening "on demand". The Mystic River-Whitford Brook Watershed Association, Mystic Marine Basin, Inc. (representing over 60 customers) and Voyager Cruises cited a short public review period and requested a public hearing to allow for additional input and presentation of more complete data from harbor management commissions, marine owners boaters and commercial operators. In response to these comments, the Coast Guard has reduced the trial period to 40 days, limited the exemption to weekdays excluding holidays and scheduled a public hearing at the end of the test period. The need for commercial vessels exemption will be evaluated during the trial period.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the regulation is for a limited period and will not prevent but would only require mariners to schedule their transits on weekdays around the eliminated 12:15 p.m. opening during the 40 day trial period. Since the economic impact of these regulations in expected to be minimal, the Coast Guard certifies that they will not have significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this temporary rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.211(b) is amended by suspending (b)(1) and temporarily adding new paragraphs (b)(3) and (b)(4) to read as follows:

§ 117.211 Mystic River.

* * * * *

(b) * * *

(3) From August 13, 1990, through September 21, 1990, from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour. However, the draw need not open at 12:15 p.m. weekdays except federal holidays and as required by (b)(4).

(4) Public vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed immediately at anytime.

Dated: August 8, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90–19263 Filed 8–15–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD8–90–07]

Drawbridge Operation Regulations; Bonfouca Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana, by permitting the bridge to open only on the hour and half-hour from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., Monday through Friday. This will be in addition to the present rule that requires twelve hours advance notice for an opening of the draw between the hours of 9 p.m. and 5 a.m. This regulation is being made because it will be of great benefit to motorists in the community that use the bridge, with no significant impact on navigation that passes the bridge.

EFFECTIVE DATE: This regulation becomes effective on September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On June 4, 1990, the Coast Guard published a proposed rule (55 FR 22822) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated June 19, 1990. In each notice interested parties were given until July 19, 1990, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Lt. J. A. Wilson, project attorney.

Discussion of Comments

Three letters were received in response to public notification of the proposed rule change. The Federal Emergency Management Agency and the National Marine Fisheries Service offered no objection to the proposed addition to the existing rule. One commentor expressed concern about the possibility of a vessel in distress being held up by a drawbridge during special regulation periods, and the need for a federal regulation covering that situation. The commentor was advised that the Coast Guard is now addressing the matter, and that a determination is forthcoming. After careful consideration of this comment and of all other factors involved, the Coast Guard has concluded that the final rule will remain unchanged from the proposed rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the regulated period, as evidenced by the log of bridge openings from October 1, 1989 through March 1, 1990, less than one vessel passed the bridge every three days during either the morning or afternoon period. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

The advance notice for an opening of the draw can be given by placing a toll-free call at any time to the LDOTD in Hammond, Louisiana, telephone 1–800–545–9280. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than twelve hours notice for an emergency, or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.433 is revised to read as follows:

§ 117.433 Bonfouca Bayou.

The draw of the S433 bridge, mile 7.0 at Slidell, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given. From 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., Monday through Friday except Federal Holidays, the draw need open only on the hour and half-hour.

Dated: July 27, 1990.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90–19234 Filed 8–15–90; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–615; RM–6567]

Radio Broadcasting Services; Summerland Key, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Summerland Key Communications Partnership, substitutes Channel 273C2 for Channel 275A at Summerland Key.

Florida, and modifies its construction permit for Station WPIK to specify operation on the higher powered channel. See 55 FR 1482, January 16, 1990. Channel 273C2 can be allotted to Summerland Key in compliance with the Commission's minimum distance separation requirements at the site authorized in the construction permit. The coordinates for this allotment are North Latitude 24–40–05 and West Longitude 81–30–05. With this action, this proceeding is terminated.

EFFECTIVE DATES: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–615, adopted July 25, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 275A and by adding Channel 273C2 at Summerland Key.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–19225 Filed 8–15–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–617; RM–6285]

Radio Broadcasting Services; Tavernier, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to Tavernier, Florida, as that community's first local broadcast service. See 55 FR 1482, January 16, 1990. Channel 245A can be allotted to Tavernier in compliance with the minimum distance separation requirements of the Commission's Rules. The coordinates for this allotment are North Latitude 25–00–36 and West Longitude 80–31–06. With this action, this proceeding is terminated.

DATES: Effective September 24, 1990; the window period for filing applications will open on September 25, 1990, and close on October 25, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–617, adopted July 25, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Florida by adding Tavernier, Channel 245A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–19226 Filed 8–15–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–127; RM–6673]

Radio Broadcasting Services; Hilo, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Phillip Lee Brewer, substitutes Channel 250C1 for Channel 250C2 at Hilo, Hawaii, and modifies the license for Station KKBG(FM) to specify operation on Channel 250C1. Channel 250C1 can be allotted to Hilo in compliance with the Commission's minimum distance separation requirements at its present transmitter site. The coordinates for this allotment are North Latitude 19–44–11 and West Longitude 155–01–48. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–127, adopted July 31, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by removing Channel 250C2 and adding Channel 250C1 at Hilo, Hawaii.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–19227 Filed 8–15–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–374; RM–6870]

Radio Broadcasting Services; Leland, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C3 for Channel 232A at Leland, Michigan, in response to a petition filed by Pyramid Communications, Ltd. We shall also modify the construction permit for Channel 232A to specify operation on Channel 232C3. Canadian concurrence

has been obtained at coordinates 44–51–40 and 85–55–30. See 54 FR 37135, September 7, 1989.

EFFECTIVE DATES: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–374, adopted July 31, 1990, and released August 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Michigan by removing Channel 232A and adding Channel 232C3 at Leland.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–19228 Filed 8–15–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 900788-0188]

RIN 0691-AA16

Change in Reporting Requirements for the Annual Survey of U.S. Direct Investment Abroad (BE-11)

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules to change the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. The survey collects information on the financial structure and operations of nonbank U.S. parent companies and their nonbank foreign affiliates. It is conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under authority of the International Investment and Trade in Services Survey Act. The proposed rules will:

(1) Raise the overall exemption level of the survey, and the exemption level for reporting individual nonbank foreign affiliates on Forms BE-11B and BE-11C, from $10 million to $15 million. This change will reduce the number of U.S. parent companies and foreign affiliates that must be reported, thus reducing the reporting burden on respondents.

(2) *For fiscal year 1992 only*, require filing of Form BE-11C for nonbank foreign affiliates owned, directly and/or indirectly, at least 10 percent by one U.S. Reporter (i.e., U.S. parent company), but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which total assets, sales, or net income exceeds $100 million. In other years, reporting on Form BE-11C is required only if the affiliate is owned 20 percent or more by all U.S. Reporters combined. For at least one year between benchmark surveys, reporting for the largest affiliates owned between 10 and 20 percent is needed in order to maintain reliable estimates of data for the universe of foreign affiliates (which is defined by law to include all foreign business enterprises owned 10 percent or more by a U.S. person).

DATES: Comments on the proposed rule will receive consideration if submitted in writing on or before October 1, 1990.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 1008, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION:

Background

The BE-11, Annual Survey of U.S. Direct Investment Abroad, is a mandatory survey, conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by section 306 of Pub. L. 98-573). It collects data on the financial structure and operations of a sample of nonbank U.S. parent companies and their nonbank foreign affiliates, with emphasis on the affiliate data. The sample data are used to generate universe estimates of data for parents and affiliates for years in which benchmark surveys, or censuses, of U.S. direct investment abroad are not conducted. The data are needed to monitor current developments in U.S. direct investment abroad and to analyze the impact of such investment on the U.S. and foreign economies. They are also needed to support important U.S. policy initiatives on international investment and trade in services.

The BE-11 survey contains three forms—the BE-11A, which covers the U.S. Reporter (i.e., U.S. parent company); the BE-11B, which covers majority-owned foreign affiliates; and the BE-11C, which covers minority-owned foreign affiliates.

A Form BE-11A must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE-11B or BE-11C. Under these proposed rules, the exemption level for reporting individual foreign affiliates on Form BE-11B or BE-11C—and, thus, for determining whether a U.S. person has to file Form BE-11A—would be raised from $10 million to $15 million. The exemption level is the level of a foreign affiliate's assets, sales, or net income below which a BE-11B or BE-11C report is not required. Raising the exemption level will reduce the number of U.S. parent companies and foreign affiliates for which reports must be filed, thus reducing the reporting burden on respondents. The proposed exemption level of $15 million is the same as that used in the related BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989, to determine whether a long form or short form had to be filed for the affiliate.

In addition to raising the exemption level, these proposed rules will require filing, *for fiscal year 1992 only*, a Form BE-11C for each nonbank foreign affiliate owned, directly and/or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which assets, sales, or net income exceed $100 million. In all other years, reporting on Form BE-11C, is required only if the affiliate is owned 20 percent or more by all U.S. Reporters combined. Primarily to reduce the reporting burden of the survey, affiliates owned less than 20 percent do not have to be reported. However, U.S. direct investment abroad is defined by law to include all foreign business enterprises owned *10* (not *20*) percent or more, directly or indirectly, by a U.S. person. BEA conducts periodic benchmark surveys of U.S. direct investment abroad, covering all foreign affiliates owned 10 percent or more. A benchmark survey for the year 1989 is now being conducted; the next survey will cover 1994. In order to maintain reliable estimates of data for the universe of all foreign affiliates in nonbenchmark years, reporting for the largest affiliates owned between 10 and 20 percent is needed for at least 1 year between benchmark surveys. Although the U.S. ownership percentages in these affiliates are low, some of the affiliates

are very large and have a sizable impact on the estimates. Under these proposed rules, reporting of the largest affiliates would be required for fiscal year 1992.

A similar one-year requirement between the 1982 and 1989 benchmark surveys was imposed in the 1987 annual survey. For that year also, a BE–11C was required for affiliates that exceeded $100 million and that were owned between 10 and 20 percent. However, in the 1987 survey, only data on assets, sales, and net income had to be provided for these affiliates. For 1992, BEA proposes to collect data on U.S. merchandise exports, US. merchandise imports, employment, and employee compensation for them, in addition to the data on assets, sales, and net income. Because trade and employment data can be volatile for large companies, it is extremely difficult to estimate the data accurately over a 5-year period without additional information for at least 1 interim year. It is estimated that, under these proposed rules, 30 nonbank U.S. Reporters will have to file 1992 BE–11C reports for about 100 foreign affiliates owned between 10 and 20 percent with assets, sales, or net income exceeding $100 million.

These new rules, if approved, will be effective with the survey covering fiscal year 1990. The 1990 forms will be mailed out in March 1991 and will be due May 31, 1991. The last BE–11 survey covered the year 1988. (It should be noted that a BE–11 survey is not conducted in a year, such as 1989, when a BE–10 benchmark survey is conducted).

A number of other revisions to the report forms themselves—such as modifications, additions, deletions, and combinations of items—have been made, primarily to incorporate changes made previously on the 1989 benchmark survey. It is anticipated that these revisions, which require no changes in the rules for the survey, will, on balance, result in a slight increase in the survey reporting burden. That increase, however, will be more than offset by the decrease in reporting burden due to raising the exemption level. The overall burden will be approximately 78,250 hours (78,550 hours for 1992), slightly less than the 80,900 hours for the current survey.

Copies of the proposed survey forms may be obtained from: Chief, Direct Investment Abroad Branch, International Investment Division (BE–50 DIAB), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0612.

The public reporting burden for this collection of information is estimated to vary from 4 to 3,000 hours per response, with an average of 71 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608–0053.

Executive Order 12291

BEA has determined that these proposed rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Paperwork Reduction Act

These proposed rules contain a collection of information requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on this collection of information requirement should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities because few, if any, small businesses are subject to the reporting requirements of this survey. The proposed exemption level of $15 million is set in terms of the size of a U.S. company's foreign affiliates. Only if the affiliate's assets, sales, or net income exceeds $15 million must it be reported. Usually, the parent company (the one required to file the report) is many times larger.

In addition, by raising the exemption level from $10 million to $15 million, U.S. parent companies will no longer have to report for affiliates between $10 and $15 million. This change should reduce the reporting burden on smaller U.S. businesses that own these affiliates. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 806

Economic statistics, U.S. investment abroad, Reporting and recordkeeping requirements.

Dated: July 6, 1990.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.14 [Amended]

2. Section 806.14(f)(3)(ii) is amended by deleting "$10,000,000" and inserting in its place "$15,000,000."

3. Sections 806.14(f)(3)(iii) and 806.14(f)(3)(iv) (A), (B), and (C) are revised as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) * * *

(iii) A Form BE–11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly or indirectly, by all U.S. Reporters of the affiliate combined, and for which any *one* of the exemption level items exceeds $15 million. In addition, *for the report covering fiscal year 1992 only*, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any *one* of the

exemption level items exceeds $100 million.

(iv) * * *

(A) None of its exemption level items is above $15 million.

(B) *For fiscal year 1992 only*, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of its exemption level items exceeds $100 million.

(C) For fiscal years other than 1992, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(D) * * *

(E) * * *

[FR Doc. 90-19272 Filed 8-15-90; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB53

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Reports and Investigations of Apparent Violations

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: A provision is proposed to be added to regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS) to clarify that any person observing an apparent violation of Minerals Management Service (MMS) regulations can report the apparent violation, and MMS will investigate the allegation. The provision was a part of the regulations in effect prior to 1988 but was dropped when the offshore operating rules were revised in 1988. Although allegations of violations of MMS regulations are investigated under existing rules, incorporation of the new provision into part 250 will assure that more people are aware that allegations of violations of MMS regulations will be investigated.

DATES: Comments must be received or postmarked by September 17, 1990.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Joh V. Mirabella, Branch of Rules, Orders, and Standards, (703) 787-1600.

SUPPLEMENTARY INFORMATION: Section 22(e) of the OCS Lands Act (OCSLA) provides that the Secretary "may review any allegation from any person of the existence of a violation of a safety regulation issued under this Act." Results of MMS conducted compliance inspections of lessee conducted activities in the OCS show that lessees generally conduct their leasehold operations in compliance with MMS requirements. However, in those cases where full compliance does not exist, it is necessary for MMS to identify the instances of noncompliance to assure that lessees take corrective action. Should a lessee fail to take corrective action, MMS can initiate civil penalty proceedings. The MMS uses all possible sources of information to identify potential incidents where lessees are not in full compliance with requirements of the law, lease provisions, and governing regulations. Accordingly, MMS welcomes information from the public concerning apparent violations of provisions of the governing laws, leases, and regulations.

In the absence of this provision, persons are able to report alleged violations that they observed, and MMS will investigate the allegation. The MMS, nevertheless, believes that the change in the rule is desireable to assure the public that an allegation of a violations of a safety regulation will be investigated.

A new § 250.25 would be added to subpart A, General, of 30 CFR part 250. This new section provides that any person may report an apparent violation of any provision of the OCSLA; any provision of a lease, license, or permit issued pursuant to the OCSLA; or any provision of any regulation issued under the OCSLA. The section also provides that when an alleged violation is reported or identified by MMS personnel, MMS will investigate the allegation and that the lessee will be advised of the matter under investigation.

Executive Order 12291

The Department of the Interior (DOI) has determined that this rule will not have a significant effect on the economy and is not a major rule under Executive (E.O.) 12291; therefore, a regulatory impact analysis is not required.

Takings Implication Assessment

The DOI certifies that the rule does not represent a governmental action capable of interference with consitututionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Paperwork Reduction Act

The rule does not contain any information collection requiring approval by the Office of Mangement and Budget pursuant to 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The DOI has determined that this does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Author

This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, Minerals Mangement Service.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated June 22, 1990.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is proposed to be amended as follows:

1. The authority for 30 CFR part 250 continues to read as follows:

Authority: Sec. 204, Public Law 95-372, 92 Stat. 629 (43 U.S.C. 1334).

2. A new § 250.25 is added to subpart A to read as follows:

§ 250.25 Reports and investigations of apparent violations.

Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any

provision of any regulation or order issued under the Act. when a report of an apparent violation has been received or when an apparent violtion has been detected by MMS personnel, the matter will be investigated in accordance with MMS procedures.

[FR Doc. 90-19290 Filed 8-15-90; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-90-143]

Drawbridge Operation Regulations; Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule and public hearing on proposed regulations.

SUMMARY: At the request of Connecticut Department of Transportation (CONN DOT), the Coast Guard is considering a change to the regulations governing the US Route 1 drawbridge over Mystic River, at mile 2.8, at Mystic, Connecticut by permitting the draw to remain closed for the 12:15 p.m. opening, Monday through Friday, except holidays while continuing the other hourly openings at quarter past the hour, from 7:15 a.m. to 7:15 p.m., 1 May through 31 October. This proposal is being made because of the reported increase in pedestrian and vehicular traffic at the noon hour. It also provides for commercial vessel and emergency situation openings. This action should accommodate the needs of vehicular and pedestrian traffic, and should still provide for the reasonable needs of navigation

The Commander, First Coast Guard District has authorized a public hearing to be held to receive comments on the proposed regulations governing the operation of the Route 1 bridge. This hearing is being held to gather information and data necessary to attempt to resolve differences between various factions who support or oppose the proposed regulation.

DATES: (a) The hearing will be held on 25 September 1990 commencing at 4 p.m.

(b) Written comments on the proposed rule or in conjunction with the public hearing must be submitted on or before 12 October 1990.

ADDRESSES: (a) The hearing will be held in the Fitch Senior High School Auditorium, at 101 Groton Long Point Road, Groton, Connecticut.

(b) Written comments may be submitted at the hearing or should be mailed to Commander (obr), First Coast Guard District, Building 135A, Governors Island, New York, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by attending the public hearing and/or by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed regulation, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Contact Officer listed above by 24 September 1990. Such notification should include the approximate time required to make the presentation, however, based on the number of speakers the presentation time may be limited to 10 minutes. A transcript will be made of the hearing and may be purchased by the public.

Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is taken on the proposed regulation. The proposed regulation may be changed in light of comments received. After the time set for the submission of comments, the Commander, First Coast Guard District will determine a final course of action. If significant differences still remain, the district commander will forward the record, including all written comments and his recommendations, to the Commandant, United States Coast Guard, for final action.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., Project Officer, and Lieutenant John Gately, Project Attorney.

Discussion of Proposed Regulations

Current regulations provide that the draw shall open on signal, with a maximum delay of 20 minutes, except (1) From May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour; (2) From November 1 through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal upon eight hours notice. The proposed regulation would eliminate the 12:15 p.m. opening, Monday through Friday, while continuing the other hourly openings at quarter past the hour from 7:15 a.m. to 7:15 p.m. Local business interests requested, through CONN DOT, to eliminate the 12:15 p.m. opening of the bridge because vehicular traffic backs up for long distances while the bridge is open, and large groups of pedestrians and tourists gather at either end of the bridge to observe vessel transits and to wait for an opportunity to cross the Mystic River. In addition, many of the people who work in and around Mystic have limited time to conduct business, visit local restaurants, and run errands during the noon time. From May through October, the number of boats transiting the bridge each month varied from approximately 480 to 2630. The total number of boats using the waterway increased from 7353 in 1986 to 9091 in 1988. Approximately 5200 vessel transits were recorded between July and August 1988 of which 543 vessel transits occurred during the 12:15 opening. This proposed schedule, while reducing openings and facilitating vehicular traffic, reportedly could create navigational safety problems for the recreational and commercial vessels due to congestion, restricted access, and the lack of holding, mooring and maneuvering areas downstream of the bridge. A temporary rule has been issued by the First District Commander under CFR 117.43 for the period 13 August through 21 September 1990 and published as a Final Temporary Rule elsewhere in this Federal Register and in Public Notice 1-723. The proposed regulation for both the U.S. Route 1 bridge and the AMTRAK railroad bridge have been rewritten, simplified and are presented in full.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the regulation will not prevent but would

only require mariners to schedule their transits on weekdays around the 12:15 p.m. opening from 1 May to 31 October. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this temporary rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.211 is revised to read as follows:

§ 117.211 Mystic River.

(a) The following requirements apply to all bridges across the Mystic River:

(1) Public vessels of the United States, state or local vessels used for public safety, vessels in distress and commercial vessels shall be passed through the draws of each bridge as soon as possible without delay at anytime notwithstanding the exceptions of (b) and (c) below. The opening signal from these vessels shall be four or more short blasts of a whistle, horn or radio request.

(2) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay for vessels listed in (a)(1) of this section shall not exceed eight minutes and all other vessels shall be passed as soon as practicable but not later than 30 minutes after the signal to open is given. However, if a train moving toward the bridge before the signal requesting the opening of the bridge is given that train may continue across the bridge and must clear the bridge interlock before stopping.

(b) The draw of the AMTRAK railroad bridge, mile 2.4 at Mystic, shall open on signal except:

(1) From November 1, through March 31, from 9 p.m. to 5 a.m., the draw shall open on signal if at least eight hours notice is given.

(2) [Reserved]

(c) The draw of the U.S. Route 1 bridge, mile 2.8 at Mystic, shall open on signal except:

(1) From May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour. However, the draw need not open at 12:15 p.m. weekdays excluding federal holidays.

(2) From November 1, through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal if at least eight hours notice is given.

Dated: August 8, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90–19264 Filed 8–15–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Part 5243

Navy Acquisition Procedures Supplement; Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Amendment of proposed rule; extension of comment period and date of public hearing.

SUMMARY: The Department of the Navy is promulgating part 5243, subpart 5243.70 of Navy Acquisition Procedures Supplement (NAPS) to restrict contract price adjustments under shipbuilding contracts, thus implementing by regulation the requirements of 10 U.S.C. 2405. The Department is also promulgating part 5252 to add the text of a solicitation provision and a contract clause.

Notice was published on June 29, 1990 at 54 FR 26708 under part 5243—Contract Modifications, subpart 5243.70—Adjustments to Prices Under Shipbuilding Contracts. This notice established July 27, 1990 as the date for receipt of written comments and announced that a public hearing would be held on August 23, 1990. These dates are being amended as set forth below.

DATES: Written comments are solicited and should be received by August 27, 1990. A public hearing on the proposed rule will be held on September 24, 1990, commencing 9 a.m. Requests to present oral testimony at the hearing should be received on or before September 10, 1990. Post hearing comments may be submitted until 5 p.m. e.d.t. October 8, 1990.

ADDRESSES: Interested parties should submit written comments and requests to testify at the hearing to: Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) (OASN(RD&A)) ATTN: Richard Moye, APIA–PP, Washington, DC 20350–1000. The public hearing on the proposed rule will be held at the Naval Sea Systems Command, National Center #3, 2531 Jefferson Davis Highway, Arlington, Virginia, in room 3S11.

Dated: August 1, 1990.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 90–19237 Filed 8–15–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards (FMVSS); Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administraiton (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking from the American Coalition for Traffic Safety, Inc., requesting NHTSA to remove requirements for "labeling formats, type sizes, etc." from Safety Standard 213, *Child Restraint Systems,* and reissue those requirements in the form of a general agency regulation. The petitioner believed that a recall campaign for each and every deviation from the labeling requirements could "numb" the public's sensitivity to safety recalls, including those for potentially "serious safety problems." The agency is denying the petition because the agency's exemption authority can be used to avoid the potential "numbing" the petitioner wishes to address. That authority relieves a manufacturer of the necessity of conducting a recall campaign for minor labeling errors.

Additionally, the process under which the exemption authority is exercised is not burdensome on manufacturers or the agency. Thus, there is no need to avoid the exemption process.

FOR FURTHER INFORMATION CONTACT: Mr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION:

Background

Safety Standard No. 213 specifies performance and labeling requirements for child seats to reduce the number of children killed or injured in motor vehicle crashes and in aircraft. (The term "child seat" as used in this notice means any device considered to be a "child restraint system" as defined in paragraph S4 of Standard 213.) Data on vehicle crashes show that child seats are highly effective in reducing a child's risk of death or serious injury in a crash.

The standard requires child seats to be labeled with detailed instructions on how to correctly use the seat, warnings about the dangers of not following installation instructions, information on the model name or number of the seat and on the name and address of the manufacturer, and a certification that the seat complies with applicable FMVSS's. The standard specifies that the labeling must be permanent, and specifies a minimum size for letters and numbers to ensure legibility. Standard 213 also requires manufacturers to give printed instructions with each child seat that provide a step-by-step procedure for installing the seat in a motor vehicle. (Paragraphs S5.5 and S5.6.) The purpose of the instructions is to encourage the correct use of child seats.

The American Coalition for Traffic Safety, Inc. (ACTS) petitioned NHTSA to amend Standard 213's labeling requirements. ACTS requested that NHTSA remove requirements for "labeling formats, type sizes, etc." from the standard, and reissue those requirements in the form of a general agency regulation. ACTS said there is precedence for its requested amendment. ACTS noted that in 1983 the agency deleted portions of Standard 115, *Vehicle Identification Number* (VIN), and reissued them as a regulation. 48 FR 22567; May 19, 1983.

ACTS sought to ensure through its requested amendment that labeling errors would not be "treated exactly the same as a very serious problem." The impetus for ACTS' suggested change comes from sections 151 and 152 of the national Traffic and Motor Vehicle Safety Act (15 U.S.C. 14121, 1412), which provides that whenever a manufacturer of motor vehicle equipment or the Secretary of Transportation determines that an item of the manufacturer's equipment does not comply with an FMVSS, the manufacturer must notify the owners, pruchasers, and dealers of the equipment of that noncompliance and to remedy the noncompliance. The only exception to this requirement is provided by section 157 of the Act (15 U.S.C. 1417), which authorizes the agency to provide an exemption from the recall requirements based on a demonstration that the noncompliance is inconsequential as it relates to safety. In the case of a noncompliance with a regulation other than an FMVSS, the notification and remedy requirements of the Act do not apply. For those noncompliances, more flexible methods of enforcement are permitted.

ACTS believed that a recall campaign for each and every deviation could "numb" the public's sensitivity to safety realls, including those for potentially "serious safety problems." ACTS believed setting forth labeling requirements in a general regulation (rather than an FMVSS) "would permit remedies to be more appropriate to the severity of the problem, and thus enhance the credibility of the [recall] process among both consumers and manufacturers."

Discussion

NHTSA believes the exemption process of section 157 is sufficient to avoid the potential "numbing" that the petitioner wishes to address. The exemption authority could be used to relieve a manufacturer of the necessity of conducting a recall and remedy campaign to correct minor labeling errors. Minor labeling errors (e.g., a label that is too small or not precisely in the proper position) were among the examples given in the legislative history of section 157 for the sorts of errors that could be inconsequential. (Sen. Rep. No. 150, 93rd Cong., 1st Sess. at 16 (1973).) ACTS did not provide reasons why the exemption procedure would not be satisfactory to exempt a manufacturer from the recall requirements for minor labeling errors.

The petitioner stated that HNTSA currently must decide whether to require a recall on "each and every deviation" from the required labeling. This statement seems to imply that ACTS believes the exemption authority has been burdensome on NHTSA with respect to child seat labeling. The authority has not been burdensome. In fact, there have not been any § 157 petitions about format and size errors in child seat labeling. Thus, NHTSA concludes there is no need to avoid the exemption process of section 157 for errors in child seat labeling.

The agency also believes there is a possibility that in some instances a failure to conform to Standard 213's size and format requirements for child seat labels could be a potentially serious safety problem warranting a recall campaign. For example, if the label is unreadable, the information about the correct use of the seat may not be understood, which could lead to the incorrect use of the seat. The incorrect use of child seats is one of the most significant problems in improving child safety.

Contrary to the petitioner's belief, NHTSA's 1983 amendment to Standard 115 is not an appropriate precedent for ACTS' requested action. The agency deleted portions of Standard 115, the VIN standard, and re-issued them as a regulation because manufacturers' errors in providing the VIN's were minor and did not have safety consequences. (The VIN is a unique number assigned each vehicle during production by the manufacturer for purposes of identification and inventory control. NHTSA uses the VIN in its safety research and enforcement activities. Other organizations use the VIN for purposes such as vehicle registration, insurance rating, and theft protection.) The agency also determined that, in view of factors such as the absence of safety consequences for VIN errors, the necessity of conducting the exemption proceedings for VIN errors imposes an excessive administrative burden on NHTSA. These considerations do not hold for Standard 213's size and format requirements for child seat labeling. There have been no § 157 petitions about child seat labeling. Since Standard 213 labeling has safety implications, the agency believes it is best to evaluate each nonconformance to the labeling requirements on a case-by-case basis.

ACTS also expressed a desire that NHTSA examine other requirements of the standard, in addition to labeling requirements, for possible transfer to a regulation. However, the petitioner said that "ACTS is not prepared to offer a complete listing of items to be considered for re-issuance." Instead, ACTS suggested that NHTSA examine requirements that have a minimal safety benefit, and suggested specifically Standard 213's corrosion resistance requirements for buckles, without explaining why ACTS chose the corrosion requirements. NHTSA sees no reason to speculate on which

requirements the petitioner believes are inappropriate for safety standard or why. Each of Standard 213's requirements was placed in the standard to meet a safety need. NHTSA believes that they continue to meet the need. Further, transfer of requirements governing the physical performance of a product, from a standard to a regulation, would not be consistent with the Act under whuch Standard 213 was issued, the National Traffic and Motor Vehicle Safety Act.

In view of foregoing discussion and the availability of the exemption procedure for minor labeling errors and the safety implications for child seat labeling, the agency has concluded that there is no reasonable possibiity that a rule along the lines requested in ACTS' petition would be issued at the conclusion of the requested rulemaking proceeding. ACTS' petition for rulemaking is, therefore, denied.

Authority: 15 U.S.C. 1392, 1407, and 1410a; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on August 10, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-19301 Filed 8-15-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 159
Thursday, August 16, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 10, 1990.

The Department of Agriculture has submited to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2119.

Reinstatement

- Rural Electrification Administration

7 CFR part 1767, Accounting Requirements for REA Electric Borrowers, subpart B, Uniform System of Accounts
Recordkeeping
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 894 recordkeepers; 232,440 hours; not applicable under 3504(h)
William E. Davis (202) 382-9450

Larry K. Roberson,

Acting Department Clearance Officer.

[FR Doc. 90-19257 Filed 8-15-90; 8:45 am]

BILLING CODE 3410-01-M

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1991 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1991 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $56.00 per license.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Import Quota Manager, Import Policy and Trade Analysis Division, room 6624-South Building, U.S. Department of Agriculture, Washington, DC 20250-1000 or telephone at (202) 447-5270.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20-6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Import Quota Manager, Import Licensing Group, Import Policy and Trade Analysis Divsion, Foreign Agricultural Service, U.S. Department of Agricultrue (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the lciensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee wil be set out in a notice to be filed with the **Federal Register.** Accordingly, this notice sets out the fee for the licenses to be issued for the 1991 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1990 has been determined to be $218,921. Of this amount, $147,921 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1990 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $118,691; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $29,230); $46,000 represents the cost of the computer on/line entry system used to monitor the use of licenses during 1990; and $25,000 represents other miscellaneous costs, including travel, postage, and an in-house computer system. The average number of licenses issued per year for the three years immediately preceding 1991 has been determined to be 3,953.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1991 calendar year, in accordance with the regulations codified at 7 CFR 6.20-634, will be $56.00 per license.

Issued at Washington, DC the 13th day of August, 1990.

Richard P. Warsack

Licensing Authority.

[FR Doc. 90-19296 Filed 8-15-90; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Chepeta Lake, Whiterocks River, and Lakeshore Basin Allotment Plans, Ashley National Forest, Duchesne and Uintah Counties, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Vernal Ranger District of the Ashley National Forest will prepare an environmental impact statement to disclose the environmental consequences of the proposed allotment management plans for the Chepeta Lake, Whiterocks River, and Lakeshore Basin allotments. All three allotments currently have allotment management plans allocating forage to domestic sheep grazing. These plans have not been updated since approval of the Ashley National Forest Land Management Plan and its accompanying EIS and are therefore out of date. General recreation use and outfitter/guide activities have increased in the area along with use by bighorn sheep from two recent transplants. New allotment management plans need to be formulated allocating forage in coordination with other activities occurring in the area. These adjoining allotments will be analyzed as to which class of livestock or wildlife would best be suited for their use. Domestic sheep, cattle, recreational horse, and use by bighorn sheep will be evaluated. In summary, the proposed action is to allocate forage resources on these allotments, meeting Forest Plan direction, while acknowledging changes in demands for public use of the area.

DATES: Comments concerning the scope of the analysis should be received in writing by September 15, 1990.

ADDRESSES: Written comments and questions should be directed to: Mary A. Wagner, Vernal District Ranger, Ashley National Forest, 353 North Vernal Ave., Vernal, UT 84078. For further information, call Ranger Wagner at (801) 789-1181.

SUPPLEMENTARY INFORMATION: The allotments under analysis include 56,655 acres of National Forest System lands in the Chepeta Lake area. All allotments are located approximately 20 miles north, northeast of Vernal, Utah. Forest Road #110 provides access to Chepeta Lake and Whiterocks River allotments while Road #018 allows limited access to Lakeshore Basin.

Although unobligated at this time, domestic sheep grazing has been the historic use of the three allotments. Recreation horse use has been increasing in recent years but is not managed. Alternatives being analyzed will range from allocating forage to domestic sheep grazing to managing the ranges for recreation horse and wildlife use. One alternative will analyze the future of bighorn sheep management for the area. We will evaluate the opportunities to change allotment boundaries, possibly combining allotments, to meet resource needs.

Issues identified to date include what impacts the proposed action will have on recreation use in the area, what the future of bighorn sheep management will be, what impacts may result to the riparian ecosystem, whether aesthetics will be affected by domestic grazing, whether water quality will suffer due to domestic grazing, and what the impacts will be on the local sheep industry.

We invite and have invited other Federal agencies, State, and local agencies, and interested individuals to participate in the project. A mailing list of interested groups and individuals has been developed based on three public meetings and numerous newspaper and radio releases. We will continue to keep all interested parties abreast of the analysis process.

The Draft EIS should be finished by November 30, 1990, with the Final EIS out early in 1991. If approved, the allotment management plans should be written and in effect by June 1991. The Draft and Final EIS will be in compliance with the Final EIS for the Land and Resource Management Plan for the Ashley National Forest or will provide the analysis for an amendment to the plan.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal Court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: August 7, 1990.

Mary A. Wagner,

District Ranger, Vernal Ranger District, Ashley National Forest.

[FR Doc. 90-19279 Filed 8-15-90; 8:45 am]

BILLING CODE 3410-11-M

Rocky Salvage Environmental Assessment; Truckee Ranger District, Tahoe National Forest; Exemption From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Rocky Salvage Environmental Assessment, Truckee Ranger District, Tahoe National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The project objective is to reduce the fire hazard, to recover the value of the timber and to rehabilitate the affected area. The Rocky Salvage Environmental Assessment (EA) has been prepared for the Bald, Pole and Cabin compartments of the Truckee Ranger District, Tahoe National Forest, which are located south of the community of Truckee, California.

There are higher than normal levels of tree mortality occurring throughout the Tahoe National Forest as a result of four years of below normal precipitation. The drought has had the greatest effect on reducing vigor and weakening natural defense mechanisms of over-stocked and over-mature stands, predisposing them to attack by bark beetles. True fir stands above 5000 feet elevation are experiencing the greatest mortality. The rapid deterioration rate of true fir requires that it be removed as soon as possible if the timber is to be utilized, its

value to be recovered, and the fire hazard to be reduced.

The Forest Supervisor has determined through environmental analysis, which included public scoping, that there is good cause to expedite this project. The analysis area is approximately 17,000 acres (gross) with at least 10,000 acres visibly affected at this time. Up to 50% or more of the trees in some stands within the analysis area are dead or dying. The Forest is proposing several sales using tractor and/or helicopter harvest systems. It is estimated that up to 20 million board feet (MMBF) could be salvaged from this analysis area this year. It is estimated that the total volume harvested could go as high as 54 MMBF if mortality increases due to the continuing drought and bark beetle infestation. The management direction for all three compartments in this proposal is established in the Truckee-Little Truckee Rivers Land Use Plan, which includes intensive forest management practices on commercial soils.

No roadless or former roadless areas exist in the analysis area. Nine miles of new system road construction is planned in the three compartments, and reconstruction is limited to ten miles. Twelve miles of temporary road construction has been identified.

A pair of spotted owls is located in the analysis area outside of the Spotted Owl Habitat Area (SOHA) network. 1,700 acres around the roost site has been designated as a Spotted Owl Range Extension Area (SOREA). Proposed salvage harvest in the SOREA will be limited to removal of pockets greater than or equal to ¼ acre in size (100' by 100'), with 50% or greater of the trees dead or dying. All pockets in the SOREA will be harvested by helicopter only. Approximately 1,984 acres of old growth exist in the analysis area. Of the 1,984 acres, 350 acres of isolated and inaccessible stands of old growth will not be entered under this salvage proposal.

The Lower Truckee River is being assessed for potential eligibility under the National Wild and Scenic River System. The Lower Truckee River Eligibility Study, which is currently being developed, has determined that the highest potential classification for the river is "recreation." Any timber salvage activities will be done to protect potential "outstandingly remarkable" values in the river corridor.

Regional entomologists have analyzed the situation and have found no economical or practical means to control the insect epidemic at the Forest level. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sales economically infeasible because of higher than normal harvesting costs. Through timber sales, fuel treatments can be accomplished (or deposits collected to accomplish them) to a degree that could not be funded otherwise. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsen-Vandenburg (K–V) funds to restore forest values being affected by extensive tree mortality.

The decision for the analysis area is scheduled to be issued in mid-August 1990. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15–20 days for discretionary review by the Chief of the Forest Service), it is likely that the projects could not be implemented this operating season or during the winter operating season. This would result in a loss of value of the timber due to deterioration. This loss of timber value would create the potential that the sales would not sell due to this value loss. It addition, the fire hazard would not be reduced if the dead timber was not removed.

Pursuant to 36 CFR 217.4(a)(1)), it is my decision to exempt from appeals the decisions relating to the harvest and restoration of the lands affected by drought-induced timber mortality in the Rocky Salvage analysis area of the Truckee Ranger District, Tahoe National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement, and address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective August 16, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 705–2648, or to Frank J. Waldo, Acting Forest Supervisor, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, CA 95959 at (916) 265–4531.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal will be documented in the Rocky Salvage EA. Public participation in the analysis was solicited through a public meeting held March 14, 1990, in Grass Valley, California, a news release in March, and through mailings to publics owning property adjacent to the Forest, holders of special-use permits and those others known to be interested in timber management on the Tahoe National Forest. Comments received were considered in the issues, range of alternatives and the management requirements and mitigation measures developed. The project files and related maps are available for public review at the Truckee Ranger District, Truckee, California.

The analysis indicates that up to 20 million board feet, primarily true fir, valued at up to two million dollars, have been currently killed by the combined effects of drought and bark beetle attack. Up to 70% of the merchantable volume can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying or not harvesting this timber could result in a loss of up to $250,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in Nevada, Placer, Plumas, Sierra, and/or Yuba Counties.

The environmental analysis documents that salvage harvesting can be conducted while protecting other resource values, such as wildlife habitat, soil productivity, watershed values, visual quality, air quality, recreation, and public safety. No wetlands, wilderness areas, Spotted Owl Habitat Areas, released roadless areas, or threatened or endangered species would be affected by the proposed projects. Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources funded with K–V monies. These delays would result in volume and value losses, and increase the chances of wildfire due

to the large quantity of standing and down fuels.

Dated: August 9, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-19288 Filed 8-15-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Rock Creek Critical Area Treatment RC&D Measure, Blaine County, ID

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, Room 124, Boise, Idaho 83705, telephone (208) 334-1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rock Creek Critical Area Treatment RC&D Measure, Blaine County, Idaho.

The Environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

Rock Creek Critical Area Treatment RC&D Measure will provide streambank erosion protection to the immediate vicinity of the project. The measure will also restore the water table to surrounding pastureland. Planned treatments to control the erosion problems include a concrete grade stabilization structure with riprap.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contracting Mr. Paul H. Calverley. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: August 1, 1990.

Paul H. Calverley,

State Conservationist.

[FR Doc. 90-19278 Filed 8-15-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held September 6, 1990, at 9:30 a.m., in the Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Review of the Annual Report.
5. Discussion of the Work Plan for FY '91.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: August 10, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 90-19243 Filed 8-15-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-475-084]

Termination of Antidumping Duty Administrative Review, Spun Acrylic Yarn From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On June 1, 1990, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on spun acrylic yarn from Italy. The Department has now determined to terminate this review.

EFFECTIVE DATE: August 16, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Bradford Ward, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington,

DC 20230; Telephone: (202) 377–4136 or (202) 377–5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1990, in response to a request from a respondent in this case, Manufattura Emmepi, S.p.A. (Emmepi), the Department published a notice of initiation of administrative review of the antidumping duty order on spun acrylic yarn from Italy (55 FR 22366). That notice stated that we would review entries from Emmepi during the period April 1, 1989 through March 31, 1990.

Emmepi subsequently withdraw its request for review on July 26, 1990. Accordingly, the Department has determined to terminate the review.

Consequently, any entries of the subject merchandise during the period April 1, 1989 through March 31, 1990 from Emmepi shall be assessed an antidumping duty at the rate in effect for Emmepi at the time of entry, or withdrawal from warehouse, for consumption. Cash deposit requirements of estimated antidumping duties for Emmepi and other manufacturers and exporters of spun acrylic yarn for entries after March 31, 1990 shall continue as specified in our most recent "Notice of Final Results" for the subject antidumping duty order (55 FR 18925, May 7, 1990).

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 USC 1675(a)) and 19 CFR 353.22(a)(5).

Dated: August 10, 1990.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations.

[FR Doc. 90–19270 Filed 8–15–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–614–601]

Steel Wire From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on steel wire from New Zealand. We preliminarily determine the total bounty or grant to be zero for the period July 1, 1987 through June 30, 1988. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 16, 1990.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 42993) the final results of its last administrative review of the countervailing duty order on steel wire from New Zealand (51 FR 31156; September 2, 1986). On September 30, 1988, New Zealand Wire Industries Limited requested an administrative review of the order. We initiated the review on December 5, 1988 (53 FR 48951). The Department has now conducted that administrative review in accordance with section 751 of the Tarriff Act of 1930 (the Tariff Act).

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of New Zealand galvanized carbon steel wire, which is a round carbon steel wire coated or plated with zinc and 0.06 inch or more in diameter. During the review period, such merchandise was classifiable under items 609.4135 and 609.4325 of the *Tariff Schedules of the United States Annotated* (TSUSA). Such merchandise is currently classifiable under HTS item 7217.12.50, 7217.22.10 and 7217.32.10. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Only one exporter, Cyclone-CMI Industries Ltd. (Cyclone), shipped the subject merchandise to the United States during the review period. The review covers the period July 1, 1987 through June 30, 1988.

Analysis of Programs

(1) Export Performance Taxation Incentive (EPTI)

Under section 156A of the Income Tax Act of 1976, exporters were entitled to receive a tax credit under the EPTI program based on the f.o.b. value of qualifying goods exported. Credits were available as a deduction against income tax payable. If the tax credit exceeded the income tax payable, the taxpayer received the difference in cash.

The rate of the tax credit depended on the predetermined value-added category into which the product fell. EPTI tax benefits were earned on a sale-by-sale basis at uniform tax credit rates established for specific years, and the amount of tax credit was calculated by multiplying that rate by the f.o.b. value of exports. Because a firm could precisely calculate its EPTI benefit for each export sale at the time the sale was made and because this credit was notsubject to change depending on the firm's ultimate tax liability, we treated the benefit from this program on a credit-as-earned basis in prior reviews.

Cyclone did not earn or apply for any EPTI tax credits for exports during the review period. Furthermore, the New Zealand government reported that effective the income tax year ending March 31, 1988 (the year April 1, 1987 through March 31, 1988), benefits from this program have ceased. Therefore, we preliminarily determine that the EPTI program is terminated and that there was no benefit from this program during the review period.

(2) Export Market Development Taxation Incentive (EMDTI)

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. The tax credit for tax returns filed during the review period was 64 percent of the total qualifying expenditures, and the normal corporate tax rate was 48 percent. Because this program is limited to exporters, we preliminarily determine that it confers an export bounty or grant.

Cyclone stated that its claims for benefits under this program reported on its income tax returns were for expenses

incurred in marketing its main products: perfabricated deer fencing, farm fencing and fencing fastening, which represent almost 99 percent of its exports. Cyclone further stated that steel wire is provided to clients on request, only as a service, that the company does not promote sales or list steel wire in its catalogues and, consequently, that it did not apply for benefits for steel wire under the EMDTI program. On this basis, we preliminarily determine the benefit from this program during the review period to be zero.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of the subject merchandise did not use them during the review period:

a. South Island Electricity Concession Scheme;

b. Export marketing assistance;

c. Preferential treatment of exporters in granting import licenses;

d. Research and development investment incentives;

e. Regional development incentives;

f. Special industrial development allowances; and

g. Export and development financing from the Development Finance Corporation.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period July 1, 1987 through June 30, 1988 to be zero.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after July 1, 1987 and on or before June 30, 1988.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Any request for disclosure under an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 10, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-19271 Filed 8-15-90; 8:45 am]

BILLING CODE 3510-DS-M

Washington University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-011.

Applicant: Washington University, St. Louis, MO 63130.

Instrument: Piezoelectric Micromanipulator, Model PM20N.

Manufacturer: Max Frankenberger Biophysikalische Technik, West Germany.

Intended Use: See notice at 55 FR 4650, February 9, 1990.

Comments: None received.

Decision: Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (May 15, 1989).

Reasons: The foreign instrument provides advance velocities from 0.3 to 25mm per second and minimal lateral vibration.

The National Institutes of Health advises in its memorandum dated June 26, 1990 that (1) This capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-19269 Filed 8-15-90; 8:45 am]

BILLING CODE 3510-DS-M

University of California, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket number: 89-282.

Applicant: University of California, Santa Barbara, CA 93106.

Instrument: Turbulence Profiler, Model OS 100.

Manufacturer: University of Western Australia, Australia.

Intended use: See notice at 55 1703, January 18, 1990.

Reasons: The foreign instrument provides turbulence intensity profiles in the open ocean with a spatial gradient resolution of 0.1mm.

Advice submitted by: National Oceanic and Atmospheric Administration, May 28, 1990.

Docket number: 90-024.

Applicant: Oregon State University, Corvallis, OR 97331-2302.

Instrument: Water Velocity Meter, Model SD-12.

Manufacturer: Sensordata AS, Norway.

Intended use: See notice at 55 FR 8164, March 7, 1990.

Reasons: The foreign instrument provides ultrasonic vectorial measurement of fluid motion velocities in three axes which are not perturbed by nearby electromagnetic field sources.

Advice Submitted by: National Oceanic and Atmospheric Administration, May 30, 1990.

Docket number: 90–005.

Applicant: Pennsylvania State University, University Park, PA 16802.

Instrument: Stopped-Flow Spectrofluorimeter, Model SF.17MV.

Manufacturer: Applied Photophysics, United Kingdom.

Intended use: See notice at 55 FR 4649, February 9, 1990.

Reasons: The foreign instrument provides (1) Sub-millisecond dead time, (2) quench capability and (3) a sampling rate of 100 points per ms.

Advice submitted by: National Institutes of Health, June 26, 1990.

Docket number: 90–14.

Applicant: University of Iowa, Iowa City, IA 52242.

Instrument: Stopped Flow System, Model SFM–3.

Manufacturer: BioLogic, France.

Intended use: See notice at 55 FR 6035, February 21, 1990.

Reasons: The foreign instrument provides (1) Precise and independent control of 3 syringes, (2) delivery volumes as low as 0.015 μl and (3) sensitivity to absorbance changes as low as 0.005.

Advice submitted by: National Institutes of Health, June 26, 1990.

Docket number: 90–017.

Applicant: City of Hope, Duarte, CA 91010.

Instrument: Mass Spectrometer, Model LAMS–50K.

Manufacturer: Shimadzu Corp., Japan.

Intended use: See notice at 55 FR 6035, February 21, 1990.

Reasons: The foreign instrument provides a time-of-flight analyzer with a mass range beyond 50 000 amu and laser desorption at 266 nm.

Advice submitted by: National Institutes of Health, June 26, 1990.

Docket number: 90–059.

Applicant: The Johns Hopkins University, Baltimore, MD 20218.

Instrument: Rapid Kinetics Spectrometer Accessory, Model RX 1000.

Manufacturer: Applied Photophysics, United Kindom.

Intended use: See notice at 55 FR 18367, May 2 1990.

Reasons: The foreign article rapidly mixes and delivers fluid reactants directly to the observation cell of an existing spectrometer or spectrophotometer.

Advice submitted by: National Institutes of Health, June 26, 1990.

Docket number: 90–060.

Applicant: Cornell University, Ithaca, NY 14853–1501.

Instrument: Image Furnace/Single Crystal Growing Apparatus, Model SC–N35 HS/50X.

Manufacturer: NEC Corporation, Japan.

Intended use: See notice at 55 FR 18368, May 2, 1990.

Reasons: The foreign instrument provides an image furnace for growing ceramic single crystals and uses a Xenon lamp for optical heating up to 2800°C.

Advice submitted by: National Institute of Science and Technology, June 19, 1990.

The National Institutes of Health, National Oceanic and Atmospheric Administration and National Institute of Standards and Technology advise that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 90–19268 Filed 8–15–90; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammal Public Display Permits

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service [NMFS] will hold a hearing on the permanent dispostition of two Atlantic bottlenose dolphins temporarily being held by Marine Animal Productions, Inc. [MAP]. These two dolphins were collected by Map under public display permit No. 521 issued to Hagenbeck Tierpark, West Germany, and have been held at the MAP facility in Gulfport, Mississippi, since they were collected. Hagenbeck Tierpark has indicated that it does not intend to take possession of these two dolphins. MAP has requested a Letter of Agreement to effect a permanent transfer of the dolphins to MAP. NMFS has proposed instead to effect this transfer by amending permit No. 649, issued to MAP, to show that the two dolphins collected under authority of permit No. 521 are part of the take allowed under permit No. 649. The alternative proposed by NMFS, if MAP should decline the proposed amendment of permit No. 649, is to consider the transfer of these animals to other holders of permits to collect bottlenose dolphins in the Gulf of Mexico. The purpose of the hearing is to allow MAP to offer additinal information for NMFS to take into account in reviewing its decision. The scope of the hearing will be limited to MAP's continued temporary holding of these two dolphins, MAP's request for permanent transfer, and NMFS' two alternatives for disposition of the two dolphins. Members of the public are invited to attend, ask questions, and offer comments relevant to the above stated issues. Comments will be limited to those within the stated scope of the hearing.

DATES: The hearing will be held on Friday, September 7, 1990, at 10 a.m. Written comments will be accepted through September 17, 1990.

ADDRESS: Written comments should be addressed to the INFORMATION CONTACT listed below. The hearing will be held in the Lobby Conference Room, Silver Spring Metro Center #1, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ann D. Terbush, Chief, Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway (SSMC#1), Silver Spring, Maryland 20910 (301/427–2289).

SUPPLEMENTARY INFORMATION: MAP requested a permanent transfer to their inventory, by Letter of Agreement, for two Atlantic bottlenose dolphins (*Tursiops truncatus*) collected under Hagenbeck Tierpark's Permit No. 521 and held at the MAP facility in Gulfport, Mississippi. Under its current regulatory regime, NMFS routinely issues Letters of Agreement to facilitate exchanges or transfers of marine mammals between facilities which hold public display permits under the Marine Mammal Protection Act, as determined appropriate for the care and maintenance of the animals. However, in this case, no physical transfer or exchange is necessary since two of the four dolphins collected by MAP in 1989 under Permit No. 521 were never placed in the permanent exhibit for which they were collected. NMFS considers it appropriate that the dolphins which were collected on May 1, 1989, and May 5, 1989, which are surplus to the needs of Hagenbeck Tierpark, and which have never resided at Hagenbeck, should be promptly transferred to meet the outstanding take authorized under

another permit, such as the one held by MAP. Altenatively, if MAP chooses to withdraw the request for transfer, NMFS would be pleased to consider a request for these dolphins from any other holder of a permit to take bottlenose dolphins from the Gulf of Mexico. These alternatives serve the public interest by avoiding the need to take additional dolphins from the wild when there is a supply of surplus captive dolphins which can be used to fulfill existing outstanding takes authorized under other permits. NMFS proposed an amendment of Permit No. 649 to allow the permanent transfer of the two dolphins and to count them as part of the take allowed under MAP's Permit No. 649. MAP objected to the NMFS proposal and requested a hearing.

Dated: August 10,1990.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 90-19295 Filed 8-15-90; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 34 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent 4,694,007, (Serial Number 6-865,055, "Use of Trimetrexate as Antiparasitic Agent" to U.S. Bioscience, having a place of business in Blue Bell, PA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention provides a method of treating infections of Toxoplasmosis or P. carini comprising administering to the host an affective amount of trimetrexate, (2.4-diamino-5-methyl-6-[[3,4,5-trimethoxyanilino) methyl] quinazoline.

The availability of the invention for licensing was published in the Federal Register Vol. 51, p. 35020 October 1, 1981 and again in Vol 53 No. 9 on January 14, 1988 when it issued as a patent. A copy of the instant patent may be purchased from: Box 9, US Patent and Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed completing applications received by the NTIS in response to this notice will be considered as objections to the grant of contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-19275 Filed 8-15-90; 8:45 am]

BILLING CODE 3510-04-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 90-C0012]

Water Refining Co., Inc., et al.

In the matter of Water Refining Company, Inc., a corporation; Ecodyne Corporation, a corporation; and Guthrie North America, Inc., a corporation; Provisional Acceptance of a Settlement Agreement and Order.

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Water Refining Company, Inc., a corporation; Ecodyne Corporation, a corporation; and Guthrie North America, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 31, 1990.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

Dated: August 9, 1990.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement

This Settlement Agreement entered into between Water Refining Company, Inc., a corporation (hereinafter, "WRC"), Guthrie North America, Inc., a corporation (hereinafter, "Guthrie N.A."), Ecodyne Corporation, a corporation (hereinafter, "Ecodyne"), and the staff of the Consumer Product Safety Commission, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. Parties

1. WRC is a corporation organized and existing under the laws of the State of Delaware, with its principal corporate offices located at 500 North Verity Parkway, Middletown, Ohio 45042. Between 1967 and 1976, WRC manufactured water softeners intended for residential use.

2. Guthrie N.A. is a corporation organized and existing under the laws of the State of Delaware, with its principal corporate offices located at 7380 Sand Lake Road, #600, Orlando, Florida 32819. Guthrie N.A. owned all the issued and outstanding shares of the stock of WRC from December 1978, through mid-1983.

3. Ecodyne is a corporation organized and existing under the laws of the State of Delaware, with its principal corporate offices located at 225 West Washington Street, Chicago, Illinois 60606. Ecodyne purchased from Guthrie N.A. in mid-1983, and presently owns all of the issued and outstanding shares of the stock of WRC.

4. The staff is the staff of the Consumer Product Safety Commission.

II. Jurisdiction

5. Between 1967 and 1976, WRC manufactured and distributed certain water softeners used in or around a permanent or temporary household or residence. These water softeners are, therefore, "consumer products" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

6. WRC sold and distributed approximately 336,000 water softeners between 1967 and 1976. WRC is, therefore, a "manufacturer" of "consumer products" which have been

"distributed in commerce," as those terms are defined in sections 3(a) (1), (4), and (11) of the CPSA, 15 U.S.C. 2052(a) (1), (4), and (11).

III. Products

7. The water softeners are 110 volt single and double tank units designed to remove certain chemicals from drinking water. The water softeners were marketed under the brand names "Servisoft," "Refine-A-Matic," and "Miracle." The water softeners contain two solenoid coils located on the water softener value assembly ("solenoid"). The purpose of the solenoid is to start and stop various operations within the unit. The solenoid is encased in an encapsulation material to prevent it from coming in contact with moisture and other elements.

IV. Staff's Allegations of Defect

8. Electrical shorts can and have occurred in the solenoid. Although the precise cause of this electrical failure is not known, it may result from degrading of the encapsulation material, or as the result of voltage surges. Consequently, the water softeners contain a "defect" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), as interpreted by § 1115.4 of the Commission's regulation entitled "Substantial Product Hazard Reports", 16 CFR 1115.4.

9. The solenoid can fail unexpectedly and without warning. This defect may result in a fire that can spread to surrounding combustibles. Although no personal injuries or deaths have been reported, the possibility exists that such a fire could result in serious personal injury or death to the occupant of the residence in which the water softener is located. Therefore the water softeners could create a "substantial product hazard" within the meaning of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

V. Staff's Allegations That WRC and Guthrie N.A. Violated the Reporting of 15 U.S.C. 2064(B)

10. WRC knew of incidents involving the water softeners since 1970. Between 1970 and 1976, WRC made several modifications to the solenoids to correct the problem. By September 3, 1976, WRC had knowledge of approximately 66 fires caused by the defective solenoid, but at no time reported the problems with the water softeners to the Commission.

11. On June 18, 1985, Ecodyne, then the owner of WRC, reported the defect to the Commission staff. During the years following 1976, WRC learned of approximately 8 additional fire-related incidents involving the water softeners. Therefore, at the time of the report, WRC and Ecodyne had knowledge of approximately 74 fires caused by the defective solenoid.

12. WRC manufactured and distributed water softeners which contained a defect that presents a substantial product hazard within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and failed to report the defect to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). The knowing failure of WRC to report the defective water softener to the Commission is a prohibited act under section 19(a)(4), 15 U.S.C. 2068(a)(4), for which a civil penalty may be assessed and recovered pursuant to section 20 of the CPSA, 15 U.S.C. 2069.

13. While WRC was under the ownership and control of Guthrie N.A., Guthrie N.A. knew or should have known of the defect, hazard, and risk of injury presented by the water softeners, and failed to report the defect to the Commission, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). The knowing failure of WRC to report the defective water softeners to the Commission is a prohibited act under section 19(a)(4), 15 U.S.C. 2068(a)(4), for which a civil penalty may be assessed and recovered pursuant to section 20 of the CPSA, 15 U.S.C. 2069.

VI Response of Guthrie N.A.

14. Guthrie N.A. denies the staff's allegations that it knew or should have known of the defective solenoid, any hazards associated therewith, and the risk of injury allegedly presented by the water softeners; and also denies the existence of any obligation to report any information regarding the water softeners to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Response of Ecodyne

15. Ecodyne denies that it had knowledge, or that it should have had knowledge, of the defective solenoid, any hazards associated therewith, or the risk of injury presented by the water softeners until sometime after it purchased WRC from Guthrie N.A. Although Ecodyne reported the defect to the Commission staff, Ecodyne denies that it was obligated to report any information regarding the water softeners to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b). The staff has made no allegations against Ecodyne; and, none are implied by Ecodyne's agreement to pay any part of the civil penalty set forth below on behalf of WRC.

VII. Agreement of the Parties

16. WRC, Guthrie N.A., and Ecodyne, and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

17. Ecodyne, on behalf of WRC, and Guthrie, N.A. each agree to pay jointly to the Commission a civil penalty in the total amount of Three Hundred Thousand Dollars ($300,000) payable within twenty (20) days after receipt of the final order of the Commission accepting this Settlement Agreement. The payment of this sum of money is made in settlement of the allegations by the staff that WRC and Guthrie N.A. violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), in failing to notify the Commission of the defective water softeners.

18. The Commission makes no determination that the water softeners contain a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

19. Guthrie N.A. makes no admission of, and expressly denies, any fault or liability arising from or in any way relating to the allegedly defective water softeners.

20. Ecodyne makes no admission of, and expressly denies any fault or liability arising from or in any way relating to the defective water softeners.

21. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the Three Hundred Thousand Dollars ($300,000) settlement amount by Guthrie N.A. and by Ecodyne on behalf of WRC, the Commission agrees to release and forever discharge WRC, Guthrie N.A., Ecodyne and their respective parent or subsidiary corporations, affiliates, divisions, successors, officers, directors, employees, agents, representatives, and attorneys, from any claim, penalty, liability, demand, cause of action, civil action or administrative or judicial proceeding, for violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the defect alleged by the staff to exist in the water softeners which are the subject of this Settlement Agreement.

22. Upon final acceptance of this Settlement Agreement by the Commission and payment of the civil penalty, WRC, Guthrie N.A., and Ecodyne knowingly, voluntarily and completely, waive any rights each of them may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's action, (3) to a

determination by the Commission as to whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law.

23. This consent agreement constitutes a special and limited settlement and release under the laws of the state of Illinois. This consent agreement does not encompass, release, or settle any obligation, demand, claim, or cause of action of any kind whatsoever, at equity or law, civil criminal, that WRC, Guthrie N.A., or Ecodyne may have, now or in the future, against or among each other, or their respective parent or subsidiary corporations, affiliates, divisions, successors, predecessors, officers, directors, employees, agents, representatives and attorneys, which claims are expressly reserved by WRC, Guthrie N.A., and Ecodyne.

24. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued.

25. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

26. The parties further agree that the Order attached hereto as "Exhibit A" and incorporated herein by reference, shall be issued under the CPSA, 15 U.S.C. 2051 *et seq.*; and that a violation of the Order shall subject Guthrie N.A., WRC, or Ecodyne to legal action authorized by law.

27. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Respondents

Dated May 17, 1990.

By: Robert Wimmer,

General Manager, Water Refining Company, Inc.

Dated: May 19, 1990.

By: Gerald T. Shannon,

Senior Vice President, Ecodyne Corporation.

Dated: May 31, 1990.

By: T.J. Hanus,

Chief Executive Officer, Guthie North America, Inc.

Dated: June 12, 1990.

By: Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Counsel for the Commission staff.

Exhibit A

Order

Upon consideration of the Consent Agreement; and the Commission having jurisdiction over the subject matter and the respondents to the Consent Agreement; and it appearing that the Consent Agreement is in the public interest, it is

Ordered, That the Consent Agreement be and hereby is accepted; and it is

Further ordered, That Ecodyne Corporation, on behalf of Water Refining Company, Inc. (WRC), and Guthrie North America, Inc., (Guthrie, N.A.) shall pay jointly to the Order of the United States Treasurer, the total sum of Three Hundred Thousand and 00/100 Dollars ($300,000), in full settlement of the staff's allegations that WRC and Guthrie N.A. violated section 15(b) of the CPSA, 15 U.S.C. 2064(b), said sum to be paid within twenty (20) days after receipt of the Final Order and Decision in this matter; and it is

Further ordered, That upon payment of the total sum of Three Hundred Thousand and 00/100 Dollars ($300,000), the Consumer Product Safety Commission releases and forever discharges WRC, Guthrie N.A., Ecodyne; and their respective parent or subsidiary corporations, affiliates, divisions, successors, officers, directors, employees, agents, representatives, and attorneys, from any claim, penalty, liability, demand, cause of action, civil action or administrative or judicial proceeding, for violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the defect alleged by the staff to exist in the water softeners which are the subject of the Settlement Agreement; and it is

Further ordered, That paragraphs 16 through 27 of the Consent Agreement are made a part hereof, but not merged in, this Order.

Provisionally accepted on the 9th day of August, 1990.

By Order of the Commission.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 90-19219 Filed 8-15-90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 17, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the

requests are available from George Sotos at the address specified above.

Dated: August 10, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of review: New.
Title: Longitudinal Study of Sample of Handicapped Student: Wave 2 Interview and Survey Instruments.
Frequency: One-time.
Affected public: Individuals or households.
Reporting Burden: Responses—12160; *Burden hours*—4013.
Recordkeeping burden: Recordkeepers—0; *Burden hours*—0.
Abstract: This on-going study will collect data on the educational, employment, and independent living status of a sample of handicapped youth while in school and upon entering adult life. Results will inform the Department of Education and Congress about the transitional progress of handicapped students from special education work.

Office of Postsecondary Education

Type of review: Extension.
Title: New and Non-Competing Continuation Applications for Grants under the Training Program for Special Programs Staff and Leadership Personnel.
Frequency: Annually.
Affected public: Non-profit Institutions.
Reporting Burden: Responses—60; *Burden hours*—2040.
Recordkeeping burden: Recordkeepers—0; *Burden hours*—0.
Abstract: This form will be used by institutions to apply for funding under the Special Staff and Leadership Personnel Training Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of review: Extension.
Title: Final Regulations—Student Assistance General Provisions—Subpart H, Appeal Procedures for Audit Determination and Program Review (Reporting).
Frequency: Biennially.
Affected public: Businesses or other for-profit; Non-profit institutions.
Reporting Burden: Responses—99; *Burden hours*—99.
Recordkeeping burden: Recordkeepers—0; *Burden hours*—0.
Abstract: Institutions participating in any Title IV Student Financial Assistance Program seeking review of a final audit determination or a final program review determination are required to submit in writing a request for review with the Department of Education.

[FR Doc. 90-19255 Filed 8-15-90; 8:45 am]
BILLING CODE 4000-01-M

Intent To Compromise Claim; Ojibwa Indian School

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Ojibwa Indian School now pending before the Office of Administrative Law Judges (OALJ), Docket No. 89-55-R (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before October 1, 1990.

ADDRESSES: Comments should be addressed to Effie Forde-Williamson, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., (room 4091, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of three Federal grants administered by the Ojibwa Indian School during the period October 1, 1986 through September 30, 1987. The audit was performed by a certified public accountant under the provisions of the Office of Management and Budget (OMB) Circular A-128. The audit report was reviewed and approved by the U.S. Department of Education (Department), Office of Inspector General.

The auditor questioned a total of $28,742 charged to three discretionary grant programs administered by the Department. Under these programs, the applicant was authorized to conduct specific Indian and bilingual education activities. The auditor found that the applicant had charged $21,142 to the three grants for space rental costs of modular classroom trailers even though there were no provisions in any of the grant agreements which would have permitted these funds to be used for that purpose. The auditor also questioned an additional $7,370 expended for computer services, duplicating costs and telephone calls, because the applicant failed to provide any records to document that the funds were expended in connection with the program conducted under the grant. Finally, the auditor questioned $220, because the applicant failed to produce any documents to support the funds being expended for postage in connection with the relevant grant.

Based on the auditor's findings, the Chief of the Cost Determination Branch of the Department's Grants and Contracts Service issued a program determination (PDL) letter on September 30, 1989 demanding a refund of the full $28,742. On November 2, 1989, the applicant appealed the monetary determinations in the PDL to the Office of Administrative Judges (OALJ). During the course of the proceeding before the OALJ, the parties negotiated a tentative settlement.

The Department proposes to compromise the $28,742 claim for $14,500. Given the litigation risks of proceeding with the appeal, the percentage of the claim to be repaid, the cost of litigating the cost if it is not settled, and the small amount of money involved, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department is satisfied that the practices that resulted in the claim have been corrected and will not recur.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Effie Forde-Williamson, Esq., at the address given at the beginning of the notice.

Authority: 20 U.S.C. 1234a(j).

(Catalog of Federal Domestic Assistance Nos. 84.060 (Indian Education); 84.003A (Transitional Bilingual Education); 84.003 (Bilingual Education))

Dated: August 10, 1990.

Thomas E. Anfinson,

Deputy Under Secretary for Management.

[FR Doc. 90-19283 Filed 8-15-90; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.021]

Invitation for Applications; Fulbright-Hays Group Products

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards under the Fulbright-Hays Group Projects Abroad Program for fiscal year 1991.

Purpose: The Group Projects Abroad Program provides grants to institutions

of higher education, State departments of education, and private nonprofit educational organizations to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor.

Deadline for transmittal of applications: October 22, 1990.

Applications available: August 27, 1990.

Eligible applicants: Institutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of such institutions, departments, and organizations.

Available funds: $1,985,000.

Estimated range of awards: $20,000 to $200,000.

Estimated average size of awards: $66,000.

Estimated number of awards: 33.

Project period: 6 weeks to 12 months.

Applicable regulations: (a) Higher Education Programs in Modern Foreign Language Training and Area Studies—Group Projects Abroad Program, 34 CFR part 664; and (b) Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82 and 85.

Priorities: Section 664.32 of the regulations governing the Group Projects Abroad Program provide for the establishment of funding priorities for this program. These priorities will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c) (2) and (3).

The Secretary gives a competitive preference to applications that meet the following priority: Short-term seminars which develop and improve foreign language and area studies at elementary and secondary schools. These applications may receive up to 15 additional points depending on how effectively the applications address this priority.

The Secretary establishes an absolute preference for applications that propose projects focusing on the following world areas: (1) Sub-Saharan Africa; (2) Latin America and the Caribbean; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East and North Africa; or (7) South Asia. All available funds for this program will be reserved solely for applications that meet this priority. Applications that propose projects focusing on Western Europe or Canada will not be funded.

FOR APPLICATIONS OR INFORMATION CONTACT: Lungching Chiao or Gwendolyn Weaver, Telephone (202) 708–7283, U.S. Department of Education, 400 Maryland Avenue SW., room 3052, ROB–3, Washington, DC 20202–5332.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 9, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–19284 Filed 8–15–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM90–12–22–001]

CNG Transmission Corp.; Supplemental Filing

August 9, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on August 7, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88–217, *et al.* and section 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed to supplement its original filing in this proceedings by tendering the following revised tariff sheet, to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Substitute First Revised Sheet No. 51

This filing supplements the July 19, 1990, filing in Docket No. TM90–12–22–001 by correcting the pagination of the sheet designated "First Revised Sheet No. 51" in the original filing. CNG also withdraws First Revised Sheet No. 51 filed on July 19, 1990.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before August 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–19244 Filed 8–15–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–3–59–003]

Northern Natural Gas Co.; Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

August 9, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on August 6, 1990, tendered for filing certain revision to its FERC Gas Tariff to correct pagination errors in the filing made June 6, 1990 in compliance with the Commission's Order date July 5, 1990 in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before August 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–19245 Filed 8–15–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–160–000]

Southern Natural Gas Co.; Request for Authorization To Recover Costs Through PGA Mechanism

August 9, 1990.

Take notice that August 2, 1990, Southern Natural Gas Company (Southern) filed a request for authorization to recover through its Purchased Gas Adjustment (PGA) mechanism certain expenses it incurred in connection with the satisfaction of a judgment rendered against it in a lawsuit concerning a gas purchase pricing dispute and with the settlement of a second, related lawsuit. Specifically, Southern seeks to recover under § 154.302(j)(11) of the

Commission's regulations amounts paid by it as interest on the principal disputed amounts under the terms of a gas purchase contract between two producers and Southern. The amount of the interest paid by Southern to the two producers which Southern proposes to recover from its jurisdictional customers in $230,687.00 and $533,289.00, respectively.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.11 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 90-19246 Filed 8-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-115-013]

Texas Gas Transmission Corp.; Tariff Filing

August 9, 1990.

Take notice that on August 7, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the revised tariff sheets contained in appendices A, B, and C attached hereto.

This filing is made pursuant to the Notice of Acceptance filed with the Commission by Texas Gas on July 27, 1990, and to comply with the provisions outlined in the "Order Approving Settlement as Modified, Issuing Certificates and Remanding Proceedings" issued November 25, 1989 and the "Order Granting Rehearing in Part, Denying Rehearing in Part and Further Modifying Settlement" issued July 10, 1990. By this filing, Texas Gas intends to implement the provisions of the settlements in the referenced dockets.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisictional customers, all parties in the consolidated dockets, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before August 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19427 Filed 8-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-147-008]

United Gas Pipe Line Co.; Compliance Filing

August 9, 1990.

Take notice that on August 7, 1990, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and certain working papers in response to the Commission's July 23, 1990 Order (July 23, 1990 Order) in this proceeding.

Effective May 1, 1989:
Fifth Substitute Original Sheet No. 4-M
Fourth Substitute Original Sheet No. 4-N
Fifth Substitute Original Sheet No. 4-O
Fourth Substitute Original Sheet No. 4-P
Fifth Substitute Original Sheet No. 4-Q
Fourth Substitute Original Sheet No. 4-Q1
Fourth Substitute Original Sheet No. 4-R

United states that the filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before August 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19428 Filed 8-15-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44557; FRL 3796-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (TBP), (CAS No. 126-73-8), diethylene glycol butyl ether (DGBE) and diethylene glycol butyl ether acetate (DGBA), (CAS Nos. 112-34-5 and 124-17-4, respectively) and malononitrile (CAS No. 109-77-3) submitted pursuant to test rules. This notice also announces the receipt of test data on 2-chloroaniline (CAS No. 95-51-2) submitted pursuant to a consent order. All submissions were received under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to the testing consent order will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for TBP were submitted by the Tributyl Phosphate Task Force, on behalf of the test sponsors pursuant to a final test rule at 40 CFR 799.4360. They were received by EPA on July 27, 1990 and August 1, 1990. These submissions describe: (1) Chromosome aberrations in chinese hamster ovary (CHO) cells, (2) CHO/HGPRT Mutation Assay, (3) method validation for the analysis of TBP in aquatic-test water. Cytogenetic and environmental effects testing is required by this test rule. This chemical is used primarily in hydraulic fluids and in the extraction of plutonium and other metals.

Test data for DGBE and DGBA were submitted by the Chemical

Manufacturers Association on behalf of the test sponsors pursuant to a final test rule at 40 CFR 799.1560. They were received by EPA on July 25, 1990. The submissions describe pharmacokinetic studies with ^{14}C-DGBE and ^{14}C-DGBA after dermal application to male and female rats. Pharmacokinetics testing is required by this test rule. DGBE or DGBA is used in latex paints as coalescing agents and to act as plasticizers for the latex polymer. DGBE and DGBA also serve as solvents in the electronics industry. In addition, DGBE is used as a diluent in brake fluids, and as a component of cutting oils, and in a number of consumer and industrial products including hard surface cleaners, metal cleaners, paint removers, stamp pad inks, floor cleaners, floor wax strippers, floor finishes, spray cleaners, penetrating oils and foam fire extinguishers.

Test data for malononitrile were submitted by Lonza Inc. pursuant to a final test rule at CFR 799.5055. They were received by EPA on July 31, 1990. The submission describes Soil/Sediment Adsorption-Desorption with ^{14}C-malononitrile. Soil sorption testing is required by this test rule. This chemical is used as an intermediate and pharmaceutical.

Test data for 2-chloroaniline were submitted by the Synthetic Organic Chemical Manufacturers Association, on behalf of E.I. DuPont de Nemours Co., and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on August 1, 1990. The submission describes the flow-through, 105 day toxicity of 2-chloraniline to embryo and larval rainbow trout, *oncorhynchus mykiss*. Toxicity testing is required by this test rule. This chemical is used primarily as a pesticide intermediate. It may also be used as an intermediate in dye and pigment production.

EPA has initiated its review and evaluation process for these data submissions. At this time the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44557). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 9, 1990.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-19300 Filed 8-15-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 90-221; DA 90-859]

Michigan Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Michigan area's (Region 21's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821-824/866-869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

1. On February 16, 1990, Region 21 (Michigan) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region.

2. The Michigan plan was placed on Public Notice for comments on April 26, 1990, 55 FR 17491 (Apr. 25, 1990). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Michigan and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rdc 905 (1987) 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements for the public safety and special emergency entities in Michigan. We note, however, that the channel allotments contained in the Michigan Plan on pages 36 H-Z may need to be modified to conform to the agreement being negotiated between the United States and Canada concerning use of the 821-824/866-869 MHz bands. This agreement will govern use of these public safety channels within 140 kilometers (87 miles) of the U.S./Canadian border. The acceptance of this Plan is therefore conditioned upon conformance with the agreement between the United States and Canada concerning use of the 821-824/866-869 MHz bands.

4. Accordingly, *it is ordered*. That the Public Safety Radio Plan for Michigan is accepted, subject to the provisions of paragraph 3 above. Furthermore, licensing of the 821-824/866-869 MHz band in Michigan may commence immediately. Licenses for stations operating within 140 kilometers (87 miles) of the U.S./Canadian border will not be issued until agreement is reached with Canada and part 90 has been modified to reflect the terms of this agreement.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 90-19229 Filed 8-15-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-873-DR]

Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska (FEMA-873-DR), dated July 4, 1990, and related determinations.

DATED: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Nebraska, dated July 4, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 1990: Hamilton County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-19286 Filed 8-15-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200275–001.

Title: Port of Portland/Nippon Yusen Kaisha, Ltd. Terminal Agreement.

Parties:

Port of Portland,
Nippon Yusen Kaisha, Ltd.

Synopsis: The Agreement amends the parties' basic agreement to: (1) Renew the agreement for one year; and, (2) provide for a per-container wharfage and dockage rate increase of 5 percent pursuant to Article V, section D of the basic agreement.

By Order of the Federal Maritime Commission.

Dated: August 13, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–19289 Filed 8–15–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Credit Lyonnais; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Credit Lyonnais*, Paris, France; to retain the shares of IMRS, Inc., Stamford, Connecticut, Corporate Class Software, Inc., New York, New York, and IMRS Europe, Milan, Italy, and London, Great Britain, and thereby engage in financial, banking, or economic data proceesing pursuant to section 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–19287 Filed 8–15–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of information collection for the Administration on Aging's Program Performance Report, Title VI of the Older Americans Act (Grants for Native Americans for Supportive and Nutritional Services).

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Program Performance Report, title VI of the Older Americans Act (Grants for Native Americans for Supportive and Nutritional Services).

OMB No.: 0980–0120.

Description: Section 614(a)(3) of the Older Americans Act states that an application for a grant under title VI, part A, shall "provide that the tribal organization will make such reports and containing such information, as the Commission may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports." The Older Americans Act Amendments of 1987 added a part B to title VI, "Native Hawaiian Program."

The Program Performance Report provides a data base for the Administration of Aging to: (a) Monitor program operations, growth and output; (b) establish program policy and direction; and (c) prepare responses to Congress and public and private agencies.

Annual number of respondents: 1,600.

Annual frequency: 1.

Average burden hours per response: 55 mins.

Total burden hours: 1,467.

Dated: August 9, 1990.

Donna N. Givens,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 90–19266 Filed 8–15–90; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Wetlands Task Force Meetings

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of change in location for New Orleans meeting.

SUMMARY: The Domestic Policy Council's Task Force on Wetlands announced on July 25, 1990 (See FR Vol. 55, No. 143, pp 30279–30280) that it would hold a series of public meetings around the country to receive public views and recommendations on specific wetland issues.

In order to accommodate a larger audience than originally anticipated, the meeting site in the greater New Orleans area has been moved from the Sheraton Airport Hotel, 2150 Veterans Blvd., New Orleans, to the new site at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, Louisiana.

FOR FURTHER INFORMATION CONTACT: Barbara Wyman, Public Meeting Coordinator, Wetlands Coordination Team, (202) 208–4148.

Dated: August 10, 1990.

Barbara A. Wyman,

Public Meeting Coordinator, Wetlands Coordination Team.

[FR Doc. 90–19260 Filed 8–15–90; 8:45 am]

BILLING CODE 4310-55-M

Small Business Competitiveness Demonstration Program; Plan for Expansion in Targeted Industry Categories

AGENCY: Office of Small and Disadvantaged Business Utilization, Interior.

ACTION: Notice.

SUMMARY: This notice invites public comment on Interior's proposed plan to expand small business participation in 10 industry categories pursuant to title VII of the "Business Opportunity Development Reform Act of 1988," Public Law 100–656.

DATES: Comments are due in writing on or before September 10, 1990.

ADDRESSES: Comments should be addressed to Frank Gisondi, Department of the Interior, Office of Small and Disadvantaged Business Utilization, 1849 C Street NW., Mail Stop 2727, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Frank Gisondi, Business and Procurement Specialist, (202) 208–4907.

SUPPLEMENTARY INFORMATION: Among other things, title VII of the "Business Opportunity Development Reform Act of 1988" seeks to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. Interior has been selected as the tenth participant in the demonstration program.

For purposes of the expansion portion of the demonstration program, Interior has targeted the following industries:

Product/service code	SIC code	Industry category description
1. 4310	3563	Compressors and vacuum pumps.
2. 4330	3569	Centrifugals, separators & vacuum filters.
3. 7010	7373	ADP systems configuration.
4. 7021	3571	ADP Central Processing Unit, Digital.
5. B526	8731, 8733	Oceanological studies.
6. B534	8731, 8733	Wildlife studies.
7. D301	7376	ADP facility operation & maintenance services.
8. D305	7374	ADP teleprocessing & time-sharing services.
9. U006	8249, 8331	Vocational/technical services.
10. V222	4141, 4142	Passenger Motor Charter Service.

Interior's Initiatives to Increase Small Business Contract Awards in the Ten Industry Categories (TIC).

The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the development and management of Interior programs to assist small and small disadvantaged businesses. The office functionally oversees the activities of delegated representatives (i.e., business utilization and development specialists (BUDS)) at each of the bureau and office major contracting offices. Designated OSDBU officials and bureau BUDS offer individual counseling sessions to small business representatives seeking advice on how to best pursue contracting opportunities with Interior. Specific guidance is provided regarding procedures for getting on solicitation mailing lists, current and planned procurement opportunities, arrangements for meeting with technical requirements personnel, and various assistance or preference programs which might be available.

Interior plans to expand small business participation in the ten selected categories by putting into effect the following initatives:

—Disseminate the list of industry categories and instruct procurement personnel in their roles and responsibilities regarding the expansion program.
—Brief contracting personnel on the program at training conferences and stress its importance.
—Participate in procurement conferences, seminars, workshops, etc. sponsored by various member of Congress, state and local governments, chambers of commerce, trade organizations, and professional associations.
—Work closely with the Small Business Administration, Minority Business Development Agency, and other agencies participating in the Demonstration Program to share ideas for increasing small business participation.
—Develop a TIC source database from current acquisition data, PASS, and data obtained from a "Sources sought" synopsis to be published in the *Commerce Business Daily*.
—Generate a TIC source list and distribute to bureaus and offices.
—Where possible, increase the number of set-asides in TIC acquisitions and continue including a maximum number of small businesses on solicitation mailing lists.
—Where possible, break out requirements to allow more participation by small businesses in areas where their participation has been historically low or nonexistent.
—Sponsor a small business trade fair which will focus on expanded participation in the TICs.

Dated: August 8, 1990.

Kenneth T. Kelly,

Acting Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 90–19238 Filed 8–15–90; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AK–967–4230–15; AA–10491]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corporation for approximately 7.8 acres. The lands involved are in the vicinity of Sitka, Alaska.

Cooper River Meridian, Alaska

T. 54 S., R. 63 E.,
Sec. 18.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Sitka Sentinel. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 (907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 17, 1990 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 90-19276 Filed 8-15-90; 8:45 am]

BILLING CODE 4310-JA-M

[OR-090-00-6310-10: GPO-347]

Eugene District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of advisory council meeting.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Friday, September 21, beginning at 9 a.m. at the Coast Range Resource Area Office, 1144 Gateway Loop, Eugene, Oregon.

The agenda of the meeting will include: A review of the past Fiscal Year (FY90) accomplishments, an outlook for FY91 budget priorities, an update on the Resource Management Planning process, and other topics that may be determined later.

The meeting is open to the public. Interested persons may make oral statements to the council at the end of the meeting or file written statements for the council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401 by the end of the business day on Wednesday, September 19, 1990. A time limit per person may be established by the District Manager.

Summary minutes of the council meeting will be maintained in the District office and will be available for public inspection and reproduction during regular business hours within 30 days of the meeting.

Dated: August 7, 1990.

Ronald Kaufman,

District Manager.

[FR Doc. 90-19240 Filed 8-15-90; 8:45 am]

BILLING CODE 4310-33-M

[CO-070-00-4320-12 ADVB-2410]

Grand Junction District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting of Grand Junction District Grazing Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 13, 1990. The meeting will convene in the conference room at the Bureau of Land Management Glenwood Springs Resource Area Office, 50629 Highway 6&24, Glenwood Springs, Colorado at 9 a.m..

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

(1) Introductions;
(2) Election of Officers;
(3) Report on Aoudad (barbary sheep) problems;
(4) Glenwood Springs Resource Area update of grazing agreements/decisions;
(5) Report on drought conditions;
(6) Colorado Range Administration policy;
(7) Proposal Glenwood Springs Resource Area Range Administration policy;
(8) Range improvement Project procedures;
(9) Status of current project work;
(10) Range betterment fund project proposals;
(11) Advisory Board project proposals;
(12) Public presentations; and
(13) Arrangement for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 12, 1990. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Mintues of the Board Meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 243-6552.

Bruce Conrad,

District Manager.

[FR Doc. 90-19239 Filed 8-15-90; 8:45 am]

BILLING CODE 4310-JB-M

[WY-040-00-4320-12]

Meetings; Rock Springs District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Public Law 92-463.

DATES: September 26, 1990, 9 a.m. until 5 p.m. and September 27, 1990, 8 a.m. until 12 p.m..

ADDRESSES: Bureau of Land Management, Kemmerer Resource Area Office, Highway 189 North, Kemmerer, Wyoming 83101.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

September 26, 1990

Tour of Cumberland/Uinta Allotment (AMP development).

September 27, 1990

1. Introductions and opening remarks.
2. Election of a Chairman and Vice-Chairman.
3. Review of tour and discussion of AMP development.
4. Actual use data—monitoring requirements.
5. Improvements proposed for completion in FY 91 with range betterment (8100) funds.
6. Maintenance of range improvements.
7. Update on wild horse gathering.

8. Public comment period.

The meeting is open to the public. Transportation is required for the tour part of the meeting. Four wheel drive vehicles will be needed. Interested persons may make oral statements to the Board between 11:30 a.m. and 12 p.m., September 27, 1990 or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, by September 25, 1990. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A transcript of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Donald H. Sweep,

District Manager.

[FR Doc. 90–19274 Filed 8–15–90; 8:45 am]

BILLING CODE 4310-22-M

[ES–962–90–4212–20 ZMBN MSES 42131]

Disclaimer of Interest

AGENCY: Bureau of Land Management, Interior.

ACTION: Issuance of recordable disclaimer of interest.

SUMMARY: Notice of intent of the United States to disclaim certain property interests in Amite County, Mississippi.

FOR FURTHER INFORMATION CONTACT: A. Nate Felton, Acting Chief, Branch of Lands, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 461–1433.

SUPPLEMENTARY INFORMATION: United States Department of the Interior, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. The United States of America, pursuant to section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, does hereby give notice of its intention to disclaim and release all interest to Leon A. Dewey, Patricia C. Dewey, Mrs. David Rushing, Margaret E. Goldsmith, Shirley E. Smith, William M. Ewell, Jr., and Judy E. Sanders in the following described property to-wit: the remaining 50% mineral interest, after that reserved to the Federal Land Bank of New Orleans, described as Beginning at the East Quarter corner of Section 15, Township 1 North, Range 2 East, Washington Meridian, Mississippi; thence South 54 chains along the East line of Sections 15 and 18 to J.E. Gunby's Northeast corner; thence West 41.5 chains to Gunby's Northwest corner; thence South 14 chains to the center of Centreville-Osyka Road; thence North 65 degrees West along the center of said road 19 chains to its intersection with Bethany-Clinton Road; thence North 35 degrees East along the center of Bethany-Clinton Road 11.85 chains to a corner of W.I. McElwee; thence North 60 degrees 30 minutes West 36.5 chains to the West line of Section 15; thence North 30 chains to Emma Cockerham's Southwest corner; thence East 37 chains to the center of Bethany-Clinton Road; thence South along the center of said road 4.47 chains to its intersection with Centreville Creek; thence East with the meanders of said creek 4.47 chains to corner with the lands of Sibil Reese; thence North along the East line of the lands of Sibil Reese 4.47 chains to the center of Section 15; thence East 41.5 chains to the place of beginning, located in Section 15 and 18, Township 1 North, Range 2 East, Washington Meridian, Amite County, Mississippi. The purpose of this notice is to afford an opportunity to all persons claiming the land adversely to file their objections in this office within 90 days of the publication date of this notice. If no protest is received, the disclaimer will issue shortly after the expiration of the 90-day period. A protestant must serve the applicants above with a copy of the objections and furnish evidence of such service to this office.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 90–19280 Filed 8–15–90; 8:45 am]

BILLING CODE 4310-GJ-M

[CA–050–00–4212–14; CA 26026]

Realty Action; Noncompetitive Sale of Public Land in Shasta County, CA

AGENCY: United States Department of the Interior, Bureau of Land Management.

ACTION: Notice of realty action; noncompetitive sale of public land in Shasta County.

SUMMARY: The following public lands in Shasta County, California has been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), to the County of Shasta, at not less than the fair market value. The County of Shasta proposes to use the land for a buffer zone around the existing West Central Landfill and for future expansion of the landfill.

Mount Diablo Meridian

T. 30 N., R. 6 W.,

Sec. 4: Lot 1 and 2 of the NE¼, N½NW¼ SE¼, S½SW¼SE¼, E½SE¼.

Containing 280.03 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The lands are not needed for Federal purposes. The patent, when issued, would be subject to the following terms, conditions, and reservations:

Excepting and Reserving to the United States

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945)

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

And Subject to

1. A right-of-way to Pacific Gas and Electric for a powerline (CA 24929).

2. A right-of-way to County of Shasta for a ditch and fill project (CA 24540).

3. A right-of-way to County of Shasta for a road (CA 26178).

4. A right-of-way to Happy Valley Telephone Company for a buried telephone cable (CA 26611).

ADDRESSES: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

DATES: On or before October 1, 1990, interested persons may submit comments to the Area Manager, Redding Resource Area, at the above address.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Realty Specialist, at the above address.

Dated: July 31, 1990.

Mark T. Morse,

Area Manager.

[FR Doc. 90–19282 Filed 8–15–90; 8:45 am]

BILLING CODE 4310-40-M

[UT–040–00–4212–14 UTU 63271]

Realty Action; Sale of Public Lands in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), public land described as Salt Lake Meridian, Utah, T. 39 S., R. 10W., section 19, W2SWNE, containing 20 acres, is proposed for direct sale to the Logandale Stake of the Church of Jesus Christ of Latter Day Saints at the appraised fair market value. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of this action is to dispose of public land that is difficult and uneconomic to manage by a government agency.

DATES: October 1, 1990.

ADDRESSES: Detailed information concerning this action is available at the Dixie Resource Area Office, 225 North Bluff Street, St. George, Utah 84770, (801) 673–4654.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The mineral estate will be retained in Federal ownership, with the right to prospect for, mine, and remove the same under applicable laws and such regulations as the Secretary may prescribe.
2. A right-of-way thereon shall be reserved for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 USC 945).
3. A road easement for public access shall be reserved theron. Said easement shall follow the route of the existing road and the proposed road to its terminus and then shall proceed in an easterly direction approximately 300 feet to public land.
4. Logandale Stake shall convey to BLM at fair market value, a road easement across private land owned by the Stake and situated immediately west of the tract being considered for sale. The alignment for this easement shall follow the alignment of the existing road through the property.

Any comments received during the comment period will be reviewed by the State Director who may vacate or modify this realty action. In the Absence of any objections, this Realty Notice will become the final determination of the Department of the Interior.

Dated: August 7, 1990.

Gordon R. Staker,

District Manager.

[FR Doc. 90–19298 Filed 8–15–90; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-060-90-4410-08]

Resource Management Plans, etc.; Newcastle Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed planning criteria for the Nebraska Resource Management Plan/ Environmental Impact Statement (RMP/ EIS).

SUMMARY: In accordance with 43 CFR 1610.4–2, proposed planning criteria have been prepared for the Nebraska RMP/EIS in the Newcastle Resource Area of the Casper District, Wyoming. The planning criteria were developed by the Bureau of Land Management (BLM) to focus the planning process on issues and management concerns identified by BLM and the public. They are based upon applicable law, BLM and Wyoming State Director's guidance, the results of public participation, coordination with other Federal agencies, state and local governments, and Indian tribes. The criteria are listed below and will be contained in the draft RMP/EIS.

DATES: Comments will be accepted prior to issuance of the draft RMP/EIS in September and during the 90-day public comment period of that document.

ADDRESSES: Written comments should be addressed to: Floyd Ewing, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Boulevard, Newcastle, Wyoming 82701.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, or Gary Lebsack, Team Leader, at the above address or telephone (307) 746–4453.

SUPPLEMENTARY INFORMATION: The planning criteria in the following lists have been developed to help focus on the formulation of alternatives, to conduct the impact analysis, and to select the preferred alternative.

Effects Criteria

Effects of the following types should be addressed in the analysis of environmental consequences in the Nebraska RMP/EIS.

Effects of surface-disturbing land uses and activities on water and air quality, cultural (historic and prehistoric) resources, paleontological resources, recreational opportunities, watershed, vegetative communities, and wildlife.

Effects caused by the use of off-road vehicles (ORVs) and effects that would result from restrictions on ORV use.

Effects from application of land use restrictions or mitigation requirements (for example, changes in levels of grazing use, or seasonal restrictions on surface-disturbing activities) on the economy of private entities that depend heavily on the use of public land and resources for such pursuits as livestock grazing and minerals activities.

Effects on land and resource uses caused by disposal or acquisition of land.

Selection Criteria

The following criteria will be used to guide the development of alternatives for the RMP/EIS.

All actions must comply with applicable laws, executive orders, regulations, USDI, and BLM policy.

Resource allocations for any action that is planned must be reasonable and achievable with available technology and within BLM budget constraints.

Areas for possible land tenure adjustments (sales, exchanges, or acquisition) will be identified to improve management effectiveness and use by the public.

Social and economic values and the public welfare and safety must be considered.

Projections will be made to identify the needs and demands that could occur in the reasonably foreseeable future (for example, ten years) for continued or potential actions, land uses, and resource commodities.

Plans and policies of state and local governments, other federal agencies, and Indian tribes will be evaluated to be sure decisions made in the RMP are compatible with those plans and policies.

Areas may be identified and evaluated for possible special management designation such as an ACEC.

Recommendations may be made as to proper allocations of forage and seasons of use for grazing animals.

Current diversity of vegetation and vegetation communities will be retained or improved.

The BLM will try to provide for orderly development of mineral resources with the lowest reasonable level of environmental impacts.

Paleontological and cultural resources will be adequately protected through development of appropriate stipulations.

Habitats for threatened, endangered, and sensitive species will be protected or enhanced.

Wetland and riparian areas will be protected or enhanced.

All management decisions will include consideration for the following: public welfare and safety; the past and present use of public and adjacent lands; and maintaining the quantity and quality of noncommodity resource values such as wildlife habitat and recreational values.

Criteria for Special Situations

The Wyoming BLM has developed standard mitigation guidelines to protect important resources in actions involving surface-disturbing activities. These guidelines are used in the planning process, in the formulation of alternatives, and in the analysis of impacts. When alternatives are formulated, it is assumed that actions proposed under each alternative will be subject to one or more of the standard mitigation guidelines. When the environmental consequences of each alternative are analyzed, the guidelines provide a baseline for measuring and comparing impacts among the alternatives.

Mitigative requirements (including restrictions on surface occupancy and/or surface activity and use) are applied as conditions of land and resource use for the following reasons: (a) To protect important cultural resources, recreational values, and wildlife resources (including threatened or endangered species); (b) to minimize soil movement on slopes; (c) to minimize disturbance of vegetation in sensitive areas such as wetland/riparian areas; or (d) to protect visual resources and historic trails.

Coal Screening Process

The coal screening process will not be conducted. Interest in coal exploration or leasing would be handled on a case-by-case basis. If an application for a coal lease would be received sometime in the future, an appropriate land use environmental analysis, which includes the coal screening process, would be conducted to determine whether or not the coal areas applied for are acceptable for development and leasing consideration. The approved RMP would be amended as necessary. To date no interest has been expressed in the leasing and development of BLM-administered coal in the planning area.

Wilderness

No wilderness areas or wilderness study areas exist on BLM-administered public land in Nebraska. There are no anticipated effects on any wilderness area or wilderness study area in Nebraska from any actions likely to occur on BLM-administered federal surface or mineral estate.

Wild and Scenic Rivers

Several bills have been introduced in Congress to designate portions of the Niobrara River and certain tributaries of it as a scenic or recreational river. A proposal is included in the same legislation to create a national recreational area in Knox and Boyd counties and to establish the Niobrara-Buffalo Prairie National Park. The RMP/EIS will not address Wild and Scenic Rivers Act provisions from the standpoint of a BLM-initiated proposal or action.

If any of these proposals are enacted the decisions in the RMP will be re-examined to ensure that the management direction of the RMP is compatible with them.

Withdrawal Review

Nebraska is not part of the mandated schedule of withdrawal review (section 204 of the Federal Land Policy and Management Act—FLPMA). Withdrawal review is done only if requested by the agency that has the withdrawal. Presently, one review is underway in Scotts Bluff County.

Dated: August 7, 1990.

Don Whyde,

District Manager (Acting).

[FR Doc. 90-19277 Filed 8-15-90; 8:45 am]

BILLING CODE 4310-22-M

[ES-940-4950-13-9513 and 043001, Group 186]

Florida; Filing of Plat of Dependent Resurvey and Subdivision of Sections 5, 9, 10 and 11 and Protraction of Lots and Blocks Subdivision in Sections 9 and 10

August 8, 1990.

1. The plat of the dependent resurvey of a portion of the north boundary, a portion of the west boundary, a portion of the subdivisional lines and subdivision of sections 5, 9, 10 an 11 of Township 48 South, Range 33 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 24, 1990.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 24, 1990.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Stephen G. Kopach,

Deputy State Director for Cadastral Survey.

[FR Doc. 90-19241 Filed 8-15-90; 8:45 am]

BILLING CODE 4310-GJ-M

[AK-932-00-4214-10; A-060861]

Notice of Termination of Proposed Withdrawal and Reservation of Land; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the U.S. Department of Agriculture, Forest Service, for additions to the Tongass and Chugach National Forests.

EFFECTIVE DATE: August 16, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

SUPPLEMENTARY INFORMATION: Notice of a proposed withdrawal and reservation of lands for the U.S. Department of Agriculture, Forest Service, was published in the **Federal Register** on March 19, 1964 (29 FR 3540).

The purpose of the application, Serial Number A-060861, was to add public lands, approximately 2,324,000 acres, to the Tongass and Chugach National Forests. Subsequently, by Congressional action pursuant to section 501 of the Alaska National Interest Lands Conservation Act, (94 Stat 2371, 2398) these lands were included as additions to the National Forests. Therefore, the U.S. Department of Agriculture, Forest Service, has cancelled its withdrawal application.

At 8 a.m. Alaska Daylight time, on the date of this Notice, all lands described in the **Federal Register** publication referred to above, will be relieved of the segregative effect pursuant to 43 CFR 2310.1(c).

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 90-19281 Filed 8-15-90; 8:45 am]

BILLING CODE 4310-JA-M

[MT-930-00-4214-10; MTM 79264]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw 20 acres of public land in Granite County to protect Rattler Gulch Limestone Cliffs Area of Critical

Environmental Concern for scientific study. This notice closes the land for up to 2 years from operation of the general land laws and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 14, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, 406–255–2935.

SUPPLEMENTARY INFORMATION: On August 7, 1990, a petition was approved allowing the BLM to file an application to withdraw the following described public land from the general land laws, including the mining laws, subject to valid existing rights:

Principal Meridian, Montana

T. 11 N., R. 13 W.,
Sec. 4, SE¼SE¼SE¼;
Sec. 9, NE¼NE¼NE¼.

The area described contains 20 acres in Granite County.

The purpose of the proposed withdrawal is to protect Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern for scientific study.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above, unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations, but only with the approval of an authorized officer of the BLM.

Dated: August 8, 1990.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90–19273 Filed 8–15–90; 8:45 am]

BILLING CODE 4310–ON–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31702]

Exemption; Wisconsin Central Ltd.; Trackage Rights Exemption; Burlington Northern Railroad Co.

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Wisconsin Central Ltd. over 0.31 mile of track known as the St. Anthony Interlocker between BN mileposts 6.9 and 7.21, at St. Paul, MN. The trackage rights were to become effective on or after August 3, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janet Gilbert, Wisconsin Central Ltd., 6250 North River Road, Suite 9000, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western RY. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: August 7, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–19297 Filed 8–15–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation and Recovery Act

In accordance with Departmental policy 28 CFR 50.7, notice is hereby given that on July 23, 1990, a proposed Partial Consent Decree in *United States* v. *Arthur Bursey, et al.*, Civil No. 81–299D, was lodged with the United States District Court for the District of New Hampshire resolving the matter as to certain defendants. The proposed Partial Consent Decree concerns the response to the existence of asbestos, a hazardous substance, at certain sites in New Hampshire pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Resource Conservation and Recovery Act. This Partial Consent Decree resolves the claims of the United States and the State of New Hampshire alleged in the complaint against Thomas Baker, Stanley Alukonis, Sophie Alukonis, Konis Corporation, Richard Lannan, Brenda Lannan, James Choate, Joyce Choate, Joseph Lemieux, and Marie Lemieux. A previous consent decree resolved the governments' claims against the Manville Sales Corporation. There continue to be unresolved claims against Arthur Bursey, Anthony Matarazzo, Sr. and Rose Matarazzo.

Under the terms of the Consent Decree, defendants the Choates and the Konis Corp. agree to file a notice of institutional controls and related covenants concerning their sites. They also will provide access to the sites and undertake the necessary institutional controls. These are the only current landowners among the settling defendants.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. Bursey, D.J. Ref. 90–7–1–165.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the eproposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.90 (10 cents per page

reproduction cost) made payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–19242 Filed 8–15–90; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Geosciences has determined that the establishment is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.*

Name of Committee: Special Emphasis Panel in Earth Sciences.

Purpose: To advise on the merit of special emphasis proposals or applications submitted to NSF for financial support.

Balanced Membership Plan: Membership will be selected on an "as needed" basis in response to specific proposals, applications, sites to be reviewed. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and the enhancing representation for women, minority, younger and disabled scientists.

Dated: August 10, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–19230 Filed 8–15–90; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357–7363.

Dated: August 10, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room [1]
Special Emphasis Panel for Earth Sciences	SBIR	Aug. 28, 1990	8:30 a.m. to 5:30 p.m	523

[1] At 1800 G Street NW., Washington, DC.

Reason for Late Notice: Because of the necessity for this Panel to review these proposals before the end of the fiscal year, it is necessary that they meet on this date.

[FR Doc. 90–19231 Filed 8–15–90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Performance Objectives Relating to Isolation of the Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a Staff Position SP 60–002, the meaning of the phrase "Performance Objectives Relating to Isolation of the Waste" (10 CFR 60.122(a)).

ADDRESSES: Copies of SP 60–002 are available for public inspection and/or copying in at the NRC Public Document Room, 2120 L Street (lower level), NW., Washington, DC 20555, and the Local Public Document Rooms located at the James R. Dickinson Library, Special Collections Department, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada 89154 and University Library, University of Nevada-Reno, Reno, Nevada 89557. Copies are also available from the National Technical Information Service, 5285 Port Royal, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Neel, Geosciences and Systems Performance Branch, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. Telephone 301/492–0448.

SUPPLEMENTARY INFORMATION: The Commission's regulations include certain "siting criteria" for geologic repositories for high-level radioactive waste. The siting criteria include a number of factors that pertain to the ability of the geologic repository "to meet the performance objectives relating to isolation of the waste," 10 CFR 60.122(a). In this document, the staff states its position that the quoted phrase refers to the long-term performance objectives set out in § 60.113 as well as § 60.112, but not to the performance objectives set out in § 60.111 (relating to the period before permanent closure).

Staff Positions are prepared for the guidance of the Office of Nuclear Material Safety and Safeguards staff responsible for the review of a license application proposing the construction and operation of a geologic repository for high-level radioactive waste. These documents are made available to the public as part of the Commission's policy to inform the U.S. Department of Energy, affected parties, and the general public, including the nuclear industry, of regulatory procedures and policies. Staff Positions are not intended as substitutes for the Commission's regulations and are not binding upon the other parties to any licensing proceeding.

Published Staff Positions will be revised, as appropriate, to accommodate comments and to reflect new information and experience. Comments and suggestions for improvement are invited and should be sent to the U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Division of High-Level Waste Management, Repository Licensing and Quality Assurance Project Directorate, Rockville, Maryland 20852.

Dated at Rockville, Maryland, this 8th day of August, 1990.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-19293 Filed 8-15-90; 8:45 am]

BILLING CODE 7590-01-M

Design Criterion for Thermal Loads

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a Staff Position SP 60-003, Definition of the Term "Performance Objectives" as used in 10 CFR 60.133(i).

ADDRESSES: Copies of SP 60-003 are available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (lower level), NW, Washington, DC 20555, and the Local Public Document Rooms located at the James R. Dickinson Library, Special Collections Department, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada 89154 and University Library, University of Nevada-Reno, LReno, Nevada 89557. Copies are also available from the National Technical Information Service, 5285 Port Royal, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Buckley, Engineering Branch, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. Telephone 301/492-0513.

SUPPLEMENTARY INFORMATION: This Staff Position addresses the term, "performance objectives," that is referred to by 10 CFR 60.133(i). Based on its evaluation, the Staff Position is that the performance objectives referred to by § 60.133(i) are those set out in §§ 60.111, 60.112 and 60.113.

Staff Positions are prepared for the guidance of the Office of Nuclear Material Safety and Safeguards staff responsible for the review of a license application proposing the construction and operation of a geologic repository for high-level radioactive waste. These documents are made available to the public as part of the Commission's policy to inform the U.S. Department of Energy, affected parties, and the general public including the nuclear industry of regulatory procedures and policies. Staff Positions are not intended as substitutes for the Commission's regulations and are not binding upon the other parties to any licensing proceeding.

Published Staff Positions will be revised, as appropriate, to accommodate comments and to reflect new information and experience. Comments and suggestions for improvement are invited and should be sent to the U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Division of High-Level Waste Management, Repository Licensing and Quality Assurance Project Directorate, Rockville, Maryland 20852.

Dated at Rockville, Maryland this 8th day of August, 1990.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-19294 Filed 8-15-90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meetings

ACTION: Notice of meeting.

SUMMARY: Pursuant to its authority under section 5051 of Public Law 100-203, the Nuclear Waste Policy Amendments Act of 1987 (NWPAA), the Environment & Public Health Panel of the Nuclear Waste Technical Review Board (the Board) will hold a public hearing to obtain the views of the public on environmental and public health issues under study by the Board as part of its review of the Department of Energy's (DOE) program to develop and site a permanent repository for the disposal of spent nuclear fuel and high-level radioactive waste.

This notice announces the final date and location of the hearing, provides procedures for participating in the hearing, and lists some of the issues that participant may want to address in their remarks before the panel.

Members of the public are welcome to make their views known by (1) preparing written testimony in advance of the hearing and presenting it before the Panel, (2) speaking briefly on a walk-in basis before the panel, or (3) submitting a written statement for the record. Those requesting to speak before panel members should be prepared to answer questions. A transcript of the hearing will be made.

Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209. Requests to testify must be received no later than close of business Tuesday, September 25, 1990.

Requests to speak briefly before the panel on a walk-in basis will be taken on the day of the hearing. Persons wanting to make a brief statement before the panel are asked to appear at the Peppermill Hotel, 2707 South Virginia Street, Reno, Nevada; (702) 826-2121, on the day of the hearing to sign up for a time slot on a first-come, first-served basis.

In lieu of appearing before the panel, interested persons may also submit written comments until November 30, 1990. Original statements should be submitted to Chairperson, Environment and Public Health Panel, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209.

DATES: The date and time of the hearing is: Monday, October 15, 1990, from 1 p.m.-8 p.m.

ADDRESSES: The hearing will be held at the Peppermill Hotel, 2707 South Virginia Street, Reno, Nevada; (702) 826-2121.

FOR FURTHER INFORMATION CONTACT: Ms Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia; (703) 235-4473.

SUPPLEMENTARY INFORMATION:

Purpose

The Nuclear Waste Technical Review Board (NWTRB) was established by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100-203) to evaluate the scientific and technical validity of activities undertaken by the Department of Energy (DOE) in its civilian nuclear waste disposal program. The waste to be disposed of consists primarily of commercial spent fuel with some defense high-level waste. In the NWPAA of 1987 of the U.S. Congress directed the DOE to characterize Yucca Mountain, Nevada, as a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

To facilitate its review and evaluation of the DOE's high-level waste program, the NWTRB organized its members into several panels, one of which is entitled the Environment and Public Health Panel. The panel is reviewing the DOE's programs that are exploring the environmental and public health effects associated with developing and operating a permanent geologic repository. Public health and environmenal consequences of transporting spent nuclear fuel to a repository also are of concern to the panel.

To date the panel has met with and heard from representatives of the DOE, the State of Nevada, the Nuclear Regulatory Commission, potentially affected Indian Tribes, and the Environmental Protection Agency. The panel now wants to provide an opportunity for other potentially affected or interested parties and citizens to share their views regarding the potential effects on the environment and public health of siting and building a repository. Because the Yucca Mountain Site in Nevada is the only site currently designated for study by the U.S. Congress as a potential repository, the panel decided to hold its hearing in the State of Nevada.

Presentation Procedures

Request to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, NWTRB, 100 Wilson Boulevard, suite 910, Arlington, Virgina 22209. The written request should specify the following:

1. Name of the person testifying
2. Title, if any
3. Name of organization, if any
4. Telephone number
5. Length of time requested for presentation (time limit will be determined once all requests have been received)

If the contact person is different from the person testifying, please provide his or her name, title (if any), organization name (if any), and telephone number. Requests to testify must be received no later than September 25, 1990.

Persons testifying are asked to provide 10 copies of their testimony and any accompanying slides or other documentation by close of business on October 5, 1990, to the NWTRB, 1100 Wilson Boulevard, Arlington, Virginia 22209. Persons testifying also are asked to bring 50 copies at the time of testimony.

The Environment and Public Health Panel will reserve time in addition to the scheduled presentations to hear the views of interested persons scheduled on a first-come, first-served basis. Presenters in this part of the hearing do not need to notify the panel in advance of their plans to attend, but they will be required to sign up the day of the hearing at the Peppermill Hotel, 2707 South Virginia Street, Reno, Nevada, beginning at 1 p.m.

To accommodate those wishing to make presentations and to allow for questions from panel members, a time limit will be placed on scheduled and walk-in presentations. The amount of time permitted for each presentation will depend on the number of requests the panel receives. Those testifying will be notified of time constraints following receipt of their written requests. Walk-in presenters will be advised of their time constraints when they sign up. All participants should be prepared to answer questiongs from the panel. A transcript of the hearing will be made.

Issues

In its *first Report to the U.S. Congress and the U.S. Secretary of Energy*, the Board, based on information received from the Environment and Public Health Panel (E&PH) made several rcommendations to the DOE on its environmental and public health program as set forth in the Department's Environmental Program Overview. The Board briefy reviewed and commented on certain aspects of the Department's approach to water air, biological, soil, cultural, and radiological issues, taking into consideration the differences in the appoach advocated by the State of Nevada. The Board recommended that the DOE develop a system approach to its studies, noting that present work completed by the DOE lacked interdisciplinary coordination. The Board also urged review of certain provisions in the Environmental Protection Agency's (EPA) standard as set forth in 40 CFR 191, "Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-level and Transuranic Radioactive Wastes." The Board urged that more up-to-date information and the ability of the scientific and technical community to meet the requirements be considered during the EPA's current efforts to revise the standard.

Since that time members of the panel have met with representatives of the State of Nevada and the Western Shoshone National Coucil to hear in greater detail their concerns about the DOE's approach to defining ecological and environmental characteristics of the proposed Yucca Mountain Site. Panel members also have been briefed on the DOE's reply to these concerns and have been provided a status report on the DOE's studies.

Some of issues that have surfaced concern the status of Native American Tribes, the ability of the DOE to assess adequately the effects of a repository on endangered species, the repercussions of the DOE decision not to develop baseline environmental information, the DOE's lack of an overall systems approach to the DOE studies, the impact of temperature increases at the site on the desert ecosystem and the soil, and the need to design the site to avoid affecting archaeological grounds near Yucca Mountain, The panel invites comments on these issues as well as others, including the effects on the population and desert ecosystem from radiation exposure, water withdrawal, and alteration of groundwater flows at the side.

Dated: August 13, 1990.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90-19291 Filed 8-15-90; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of RI 20-63, RI 20-64, and RI 20-65 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the reclearance of an information collection, RI 20-63, Election of Reduced Annuity with Survivor Benefits for a Post-Retirement Spouse; RI 20-64, Post-Retirement Election of Reduced Annuity with Survivor Benefits for a Former Spouse; and RI 20-65, Do You Want to Provide a Survivor Annuity for Your Spouse? OPM uses forms RI 20-63, RI 20-64, and RI 20-65 to provide Civil Service annuitants the choice to elect to provide survivor annuity benefits for a former spouse divorced after retirement and for a spouse whom they marry after retirement.

There are estimated to be 3300 respondents for RI 20-63, 1800 for RI 20-64, and 300 for RI 20-65. It is estimated to take approximately 30 minutes to complete each form. The annual burden is 2700 hours (1650 hours for RI 20-63, 900 hours for RI 20-64, and 150 hours for RI 20-65). Burden is not expected to vary. These information collections are included in OPM's 1990 Information Collection Budget.

For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be received on or before September 17, 1990.

ADDRESSES: Send or delivery comments to—

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
Mary Beth Smith-Toomey, (202) 606–0623.
U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

[FR Doc. 90–19261 Filed 8–15–90; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28322, File No. SR–CBOE–89–30

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Changes Relating to the Eligibility Requirements for RAES in SPX/NSX Options

On January 8, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to make the eligibility requirements for market makers participating in the CBOE's Retail Automatic Execution System ("RAES") in Standard & Poor's 500 ("S&P 500") Index options ("SPX" or "NSX") [3] permanent and to incorporate these eligibility requirements into a new Exchange rule, CBOE Rule 24.16.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 27790 (March 9, 1990), 55 FR 9418.[4] No comments were received on the proposed rule change.

The existing market maker eligibility requirements to participate on RAES for SPX/NSX options were approved on a pilot basis in December 1988 and the Exchange proposes that these requirements be made permanent and incorporated into the Exchange's rules.[5] Currently, any Exchange member who is registered as a market maker is eligible to log on RAES in SPX/NSX options provided that the following requirements are met: (1) The market maker must log on RAES using his own acronym and individual password, and all RAES trades to which he is a party must be assigned to and clear into his designated account; (2) the market maker must designate that his trade be assigned to either his individual account or a joint account in which he is a participant; [6] and (3) unless exempted by the MPC, a member must log on RAES in SPX/NSX options only in person and must remain on the system only so long as he is present in the trading crowd.

The current eligibility requirements also include several provisions designed to ensure the maintenance of sufficient levels of market maker participation on RAES for SPX/NSX options. In particular, unless exempted by the MPC, any market maker who logs onto RAES in SPX/NSX options at any time during an expiration month is required to participate in RAES in SPX/NSX options whenever he is present in that trading crowd until the next expiration. The current rules also provide that, in the event there is inadequate RAES participation at any time, the MPC may require market makers who are members of the SPX/NSX trading crowd to sign on to RAES "absent reasonable justification or excuse for non-participation." In addition, eligibility requirements provide the MPC with the authority to allow market makers in other classes of options to log on RAES for SPX/NSX options if there is inadequate RAES participation in SPX/NSX options.

Members who fail to abide by the eligibility requirements may be fined pursuant to CBOE Rule 6.20 and further disciplinary action may be taken by the Business Conduct Committee ("BCC") under chapter XVII of the Exchange rules. In addition, such failure may also be the subject of remedial action by the MPC, including, but not limited to, suspending a member's eligibility for participation on RAES and such other remedies as may be appropriate and allowed under chapter VIII of the Exchange rules.

The CBOE has prepared data regarding the level of market maker participation on RAES in SPX/NSX.[7] The number of RAES participants in SPX/NSX has averaged only five or six per month in 1990. This number is not inconsistent with the RAES volume in SPX because an average of only 37 SPX/NSX RAES trades occurred per day for the first five months of 1990. Moreover, the Exchange data indicates that, even though there are substantially more market makers on RAES for options on the Standard & Poor's 100 Stock Index ("OEX") in comparison to SPX/NSX RAES, the average number of trades per SPX participant on RAES is significantly less than on OEX RAES. In particular, the CBOE notes that OEX RAES participants are involved in 1½ times as many RAES trades as SPX RAES participants.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[8] Specifically, the Commission believes, as it noted when approving the eligibility requirements on a pilot basis, that the requirements are designed to strengthen the integrity of the RAES system for SPX/NSX options, thereby contributing to the maintenance of fair and orderly markets and the protection of investors. In particular, the eligibility standards are designed to ensure there is adequate market maker participation at all times in RAES for SPX/NSX options and that market makers are properly logged onto the system. In doing so, investors are assured the benefits of automatic execution that RAES provides—namely, the timely, accurate, and certain execution of their orders.

The Commission also believes that the level of RAES participation in SPX/NSX on average has been sufficient because of the limited usage of RAES by SPX/NSX investors and the ability of the Exchange to take steps, if necessary, to ensure adequate market maker participation in SPX/NSX RAES. In this regard, the Commission notes that the SPX/NSX market is primarily institutional in nature, with RAES trading constituting only .4% of daily SPX volume during April and May 1990. Thus the average market maker participation in RAES for SPX/NSX has been adequate.[9]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] SPX options are settled based on the closing prices of the securities comprising the S&P 500 Index on Expiration Friday. NSX options are settled based on the opening prices of securities comprising the S&P 500 Index on Expiration Friday.

[4] The Commission extended the existing pilot eligibility requirements on an accelerated basis when the current proposal was noticed. Additionally, the Commission noticed a related proposal by the Exchange (SR–CBOE–89–29) to incorporate formally into its Rules the operational procedures governing RAES in S&P 500 options. See Securities Exchange Act Release No. 27810 (March 16, 1990), 55 FR 10736.

[5] The Commission approved the CBOE's proposed RAES eligibility requirements for SPX options on a pilot basis in December 1988. See Securities Exchange Act Release No. 26373 (December 20, 1988), 53 FR 52542.

[6] Unless exempted by the Market Performance Committee ("MPC"), at any given time only one participant in a joint account may use the joint account for trading on RAES in SPX/NSX options.

[7] See letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas Gira, Branch Chief, SEC, dated June 27, 1990.

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] The Commission is reviewing the performance of the options markets during the market volatility of October 1989, and may have further recommendations for RAES based on that review. Moreover, if the use of RAES for SPX/NSX were to

Continued

The Commission further believes that it is beneficial to incorporate the eligibility requirements, as modified, into the Exchange's rules. The Commission believes it is important that the rules relating to all aspects of RAES, including the eligibility requirements for market maker participation, be included in the Exchange's Rules in order to provide market participants and investors with easier access to them.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–89–30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: August 9, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–19250 Filed 8–15–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28324, File No. SR–Phlx–90–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Its Schedule of Fees and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the Phlx's Schedule of Fees and Charges to include a new fee entitled Equity Specialist Fee. Pursuant to this new fee, all equity specialist units will be charged a minimum annual base fee of $3,000 (*i.e.*, $250 per month). Additionally, each unit's charge will include a fee based on the share trading volume generated in the prior month on the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System.[1] This fee shall not, on a floor wide basis, exceed $16,000 monthly or $192,000 annually. Furthermore, an individual specialist unit will not be charged more than $20,500 on an annual basis for the PACE fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Phlx's Schedule of Fees and Charges. The revisions reflect revenue enhancements necessitated by several recent determinations of the Phlx's Board of Governors to align competitively the service charges associated with the PACE system vis-a-vis other market centers' automated order delivery and execution system.[2] In this regard, the proposed rule change correlates with the Phlx's institution of a schedule of transaction fee discounts of up to 60% for transactions executed through the PACE system.[3] In authorizing this fee change, therefore, the Phlx achieves a revenue neutral offset to the reductions in PACE charges. As proposed, the specialists' fees recognize the direct and indirect benefits to all Phlx equity specialists in receiving order flow from member organizations participating in PACE.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–

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grow significantly, the Commission expects the CBOE to conduct a review to determine whether market maker participation levels remained adequate.

[10] 15 U.S.C. 78s(b) (1982).

[11] 17 CFR 200.30–3(a)(12) (1989).

[1] PACE provides a system for the automatic routing and execution of orders on the Phlx equity floor. See Phlx Rule 229.

[2] For example, the Designated Order Turnaround ("DOT") System and the Post Execution Reporting Service ("PERS") System are the automated order delivery systems for the New York Stock Exhange, Inc. and the American Stock Exchange, Inc., respectively, and the Midwest Stock Exchange's Automated Execution System ("MAX") and the Pacific Stock Exchange's Securities Communication Order Routing and Execution System ("SCOREX") provide both order routing and execution.

[3] See Securities Exchange Act Release No. 28212 (July 17, 1990) (providing for immediate effectiveness upon filing for File No. SR–Phlx–90–15, submitted to the Commission on June 29, 1990).

Phlx–90–17 and should be submitted by September 6, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–19251 Filed 8–15–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17664; 812–7491]

Mathers Fund, Inc. and Mathers and Co., Inc.; Application

August 9, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "1940 Act").

Applicants: Mathers Fund, Inc. (the "Fund") and Mathers and Company, Inc. (the "Adviser").

Relevant 1940 Act Section: Section 15(f).

Summary of Application: Applicants seek an amendment to an existing order under section 6(c) (the "Existing Order"), Investment Company Act Release No. 11885 (Aug. 5, 1981), exempting applicants from the provisions of section 15(f)(1)(A) of the 1940 Act. The requested relief would eliminate certain conditions in the Existing Order.

Filing Dates: The application was filed on March 12, 1990, and an amendment was filed on May 9, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a coy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 5, 1990, and should be accompanied by proof of service on applicants, in the form of an affadavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 100 Corporate North, Suite 201, Bannockburn, Illinois 60015.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272–3043, or H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Fund is an open-end management investment company registered under the 1940 Act and organized under the laws of Maryland. The Adviser is registered under the investment Advisers Act of 1940 and organized under the laws of Illinois.

2. The Adviser was reorganized in 1981. Prior to the reorganization, Thomas N. Mathers ("Mathers") owned 93% of the outstanding shares of stock of the Adviser. Pursuant to the reorganization, Mathers' interest in the Adviser was reduced from 93% to 10% as a result of the issuance of additional shares of stock of the Adviser to the four individuals other than Mathers who, together with Mathers, then constituted the shareholders and officers of the Adviser.

3. The 1981 reorganization involved an assignment of the Fund's then-existing investment advisory contract with the Adviser. Section 15(f)(1) of the 1940 Act provides a safe harbor which permits an affiliated person of an investment adviser to receive a benefit in connection with such an assignment. Subparagraph (A) of section 15(f)(1) requires that for a period of three years following the assignment, at least 75% of the members of the board of directors of the investment company will not be "interested persons" of the investment adviser, as defined in section 2(a)(19) of the 1940 Act.

4. At the time of the 1981 reorganization, the Fund had six directors, three of whom (including Mathers) were interested persons of the Adviser. Neither the Adviser nor the Fund desired to reconstitute the board of directors of the Fund at such time or believed that it would be in the best interests of the Fund's shareholders to impose upon the Fund the expense of increasing the size of the board to meet the 75% disinterested director requirement of section 15(f)(1)(A). Accordingly, the Adviser and the Fund requested and received exemptive relief from section 15(f)(1)(A), subject to certain conditions.

5. The relief granted by the Existing Order is explicitly conditioned on the following: (a) The Adviser and the Fund will each use its best efforts to ensure that until Mathers retires or otherwise terminates his employment with the Adviser, at least three directors (50%) of the Fund will be non-interested directors; (b) promptly following Mathers' retirement or termination of employment, the Adviser and the Fund will each use its best efforts to ensure that Mathers will be replaced as a director of the Fund by a non-interested person and that the resulting ratio of non-interested directors will be maintained for a three-year period; and (c) until the expiration of the three-year period following Mathers' retirement or termination of employment, the Adviser and the Fund will each use its best efforts to cause Mathers' successor on the Fund's board of directors, and the successor to any position on such board held by a person who at the time of the reorganization was a non-interested person, to be selected, proposed for election, and elected in the manner provided for in section 16(b) of the 1940 Act (requiring, among other things, election by the shareholders).

6. Applicants represent that at the time of the 1981 reorganization, all of the parties thereto, including Mathers himself, expected that Mathers would not remain employed by the Adviser for more than a short period of time.

7. The 1981 reorganization was intended to provide for an orderly transition of the management and control of the Adviser following Mathers' retirement or death. Applicants submit that an orderly transition in the ownership and management of the Adviser has occurred without any adverse effect on Fund shareholders. Mathers' involvement in the management and affairs of the Adviser has gradually decreased in the years since the 1981 reorganization to the point where he is now relatively inactive in such management and affairs. However, Mathers continues to be employed as a consultant by the Adviser and to serve as a director of the Fund, even though he resigned and as a director of the Adviser in 1986. Accordingly, although the reorganization of the Adviser and the assignment of the Fund's investment advisory contract occurred approximately nine years ago, the conditions set forth above continue to be applicable and to interfere with and lend confusion to planning for the future composition of the Fund's board of directors. Applicants submit that the conditions are unclear in certain respects, may be onerous for the Fund and the Adviser to comply with, and were based on expectations which failed to materialize or on circumstances

which no longer pertain. In this regard, Applicants argue that the conditions were premised on the expectation that Mathers' departure would be a definitive event rather than a process by which Mathers over time would gradually decrease his day-to-day involvement in the affairs of the Adviser. Applicants submit that this gradual withdrawal from the business of the Adviser raises the question when, for purposes of the Existing Order, Mathers should be considered "retired."

8. At the time of the 1981 reorganization, Mathers' shares were subject to a Stock Redemption and Purchase Agreement pursuant to which (a) The Adviser was obligated to repurchase Mathers' shares upon his death and (b) Mathers and the Adviser had the option to sell or purchase, respectively, all or a portion of Mathers' shares at a fixed price during the ten-year period following Mathers' ceasing to be employed by the Adviser. Certain terms of such agreement were renegotiated and, as of March 10, 1987, the Adviser, Mathers, and the other shareholders of the Adviser entered into a superseding Stock Redemption and Purchase Agreement (the "1987 Agreement"). The 1987 Agreement contains the repurchase and option provisions described above. In addition, the 1987 Agreement provides that in the event Mathers proposes to transfer any of his shares, the other shareholders have a first option and the Adviser has a second option to purchase any of the shares proposed to be transferred.

9. The Existing Order requires the Adviser to maintain life insurance policies on Mathers' life to fund its stock repurchase obligations. The Adviser believes that the face amount and cash surrender value of its existing insurance are more than sufficient to enable the Adviser to cover the payment of the specified price for Mathers' shares without any adverse financial or cash flow effect on the Adviser's business.

Applicants' Legal Conclusions

Applicants believe that no legitimate statutory purpose would be served by the continued applicability of condition (a), (b), or (c) described in paragraph 5 above because there is no longer any risk of abuse of Fund shareholders as a result of the 1981 reorganization. Applicants further believe that an amendment to the Existing Order eliminating such conditions is appropriate and in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. In this regard, Applicants argue that if the conditions are not eliminated, any vacancy that may occur on the Fund's board of directors may result in the Fund's being required to fill the vacancy as provided by section 16(b) of the 1940 Act. In Applicants' view, that section would, in relevant part, require the Fund to call a shareholders' meeting which, under Maryland law, would not otherwise be required. Thus, the filling of any such vacancy would necessarily impose upon the Fund's shareholders the burdens and expenses associated with a shareholders' meeting. Applicants claim that the shareholders of the Fund would not gain any benefit from such expenditures. Applicants therefore request that the Commission issue an order under section 6(c) of the 1940 Act eliminating the conditions described above.

Applicants' Conditions

Applicants will comply with all of their respective representations and obligations made in connection with the issuance of the Existing Order other than as expressly amended, revised, or eliminated in the amended order. The Adviser will continue to maintain life insurance on the life of Mathers, the aggregate benefits of which will equal the lesser of (a) The approximately $763,000 aggregate life insurance benefits that were in effect at the time of the issuance of the Existing Order or (b) the maximum amount at any time potentially payable to Mathers upon exercise of outstanding options with respect to the Adviser's shares owned by him plus any unpaid installments from prior exercises of such options (and including for purposes hereof any amount of deferred compensation payable to Mathers).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-79252 Filed 8-15-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17663; File No. 812-7572] The Penn Mutual Life Insurance Co., et al.

August 9, 1990.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Penn Mutual Life Insurance Company ("Penn Mutual"), Penn Mutual Variable Annuity Account III (the "Separate Account"), Penn Mutual Equity Services, Inc. ("PMES"), and Janney Montgomery Scott Inc. ("JMS").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

Summary of Application: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of the Separate Account pursuant to certain combination variable and fixed annuity contracts.

Filing Date: The application was filed on August 2, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission no later than 5:30 p.m. on September 4, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Penn Mutual and the Separate Account, Independence Square, Philadelphia, PA 19172; PMES and JMS, 1601 Market Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney at (202) 272-3045, or Heidi Stam, Assistant Chief at (202) 272-2060, Office of Insurance Pruducts and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Penn Mutual is a mutual life insurance company organized under the laws of Pennsylvania in 1847. Penn Mutual established the Separate Account on April 13, 1982 for the purpose of funding variable annuity contracts to be issued by Penn Mutual. Penn Mutual intends to use the Separate Account to fund a new combination variable and fixed annuity contract (the

"Variable/Fixed Contract"), which provides purchasers with the option of allocating amount to fixed-interest options guaranteed by Penn Mutual through its general account.

2. The Separate Account is registered under the 1940 Act as a unit investment trust. The Separate Account is divided into separate subaccounts, each of which invests in corresponding separate portfolios of Penn Series Funds, Inc.

3. The principal underwriters of the Variable/Fixed Contracts are PMES and JMS, both wholly owned subsidiaries of Penn Mutual. PMES and JMS are broker-dealers registered under the Securities Exchange Act of 1934.

4. The Variable/Fixed Contract is an individual deferred annuity contract which permits purchase payments to be made on a flexible basis subject to certain minimums, the amount of which will vary depending on whether the Variable/Fixed Contract is issued in connection with a tax-qualified retirement plan. The Variable/Fixed Contract owner may allocate all or a portion of each purchase payment among one or more subaccounts of the Separate Account, each of which invests its assets in a corresponding portfolio, or among the fixed-interest options provided under the Variable/Fixed Contract. Upon notice of Penn Mutual, the Variable/Fixed Contract owner may transfer amounts credited to his or her Variable/Fixed Contract from one subaccount of the Separate Account to another subaccount of the Separate Account, subject to certain limits in the frequency and size of such transfers.

5. Variable/Fixed Contract owners may choose from several types of annuities. If the Annuitant (or in some cases, the Variable/Fixed Contract owner) dies before the annuity date, Penn Mutual guarantees payment of a certain minimum amount based on a formula described in the Variable/Fixed Contract, regardless of the then current Variable/Fixed account value.

6. A contingent deferred sales charge my be assessed on a full or partial withdrawal, depending upon the amount of time such withdrawn amounts have been held under the Variable/Fixed Contract. The contingent deferred sales charge made at withdrawal will be calculated according to the following schedules. First, if no purchase payments have been made after the first contract year, the deferred sales charge will equal:

Withdrawal during contract year	Deferred sales charge as a percentage of amount withdrawn
1	7.0
2	6.0
3	5.0
4	4.0
5	3.0
6	2.0
7	1.0
8 and later	No charge

Second, if purchase payments have been made in any contract year after the first, the deferred sales charge will equal:

Withdrawal during contract year	Deferred sales charge as a percentage of amount withdrawn
1	7.0
2	6.0
3	5.0
4	4.0
5	3.5
6	3.0
7	2.5
8	2.0
9	1.5
10	1.0
11 and later	No charge

Once in each contract year on or after the last day of the first contract year, the owner of a Variable/Fixed Contract may withdraw 10% of the contract value free of the contingent deferred sales charge. The total sum of the contingent deferred sales charges deducted from amounts withdrawn from the Separate Account will under no circumstances exceed 8½% of the total of all purchase payments credited to the Separate Account. The contingent deferred sales charge, if applicable, will be assessed by Penn Mutual to reimburse it for expenses relating to the sale of the Variable/Fixed Contracts.

7. Penn Mutual will deduct a contract administration charge of $30, or a lesser amount as required under state insurance laws, each year on a date specified in the Variable/Fixed Contract (and on the date the account value is withdrawn in full if other than the date specified) prior to the annuity date. The contract administration charge is made solely to reimburse Penn Mutual for actual expenses incurred in administering the Variable/Fixed Contracts.

8. In addition, Penn Mutual will assess a mortality and expense risk charge which on an annual basis will equal 0.75% for mortality risks and 0.50% for expense risks, of the daily net asset value of the Separate Account. The mortality and expense risk charges compensate Penn Mutual for its guarantees that: (i) The $30 contract administration charge assesed annually prior to the annuity date will not be increased, (ii) the annuity purchase rates set forth in the Variable/Fixed Contract will not be increased, (iii) the amount of each annuity payment after annuity date will not be affected by variations in the mortality experience of persons receiving such payments or the general population, and (iv) the amount payable upon death of the annuitant or the Variable/Fixed Contract owner prior to the annuity date will not be less than the minimums specified in the Variable/Fixed Contract, regardless of the then current account value.

9. Applicants represent that the level of the mortality and expense risk charge (1.25%) is reasonable in relation to the risks assumed by Applicants under the Variable/Fixed Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon Penn Mutual's analysis of publicly available information about such contracts, taking into consideration the particular annuity features of comparable contracts, including such factors as current charge levels, charge level guarantees or annuity rate guarantees, death benefit guarantees, the manner in which the charges are imposed, and the markets in which the contracts are offered. Applicants state that Penn Mutual has incorporated the identity of the products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

10. Applicants represent that the sales charge assessed in connection with sales of the Variable/Fixed Contract may be insufficient to cover all the costs of distributing those contracts. Applicants state that if the acutal amounts derived from the sales charge prove insufficient to cover the actual costs of distributing the Variable/Fixed Contracts, the deficiency will be met from the general corporate funds of Penn Mutual, including amounts derived from risk charges not otherwise applied to the expenses the risk charges were designed to defray.

11. Applicants represent that Penn Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the owners of the Variable/Fixed Contracts, and state that the basis for this conclusion has been incorporated into a memorandum which Penn Mutual will

maintain and make available to the Commission or its staff upon request.

12. Applicants represent that the assets of the Separate Account will invest only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses under rule 12b–1 of the 1940 Act, to have such plan formulated and approved by its board of directors (or trustees), the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(10) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–19253 filed 8–15–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 90–17]

Houston/Galveston Navigation Safety Advisory Committee; Solicitation for Membership

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee. Present appointments will expire with the present committee charter on November 6, 1990. Approximately eighteen memberships will be filled.

Applicants may be from State and local government, the marine industry, environmental groups, academia, and other interested entities. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Houston/Galveston area as required by the Coast Guard. The committee normally meets three times a year at various locations in the Houston/Galveston area. Members serve voluntarily, without compenstaion from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, November 6, 1992.

DATES: Requests for applications should be received no later than August 31, 1990. Completed applications should be returned no later than September 14, 1990.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan) Room 1209, Hale Boggs Federal Building, 501 Magazine Stret, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: August 6, 1990.

J.M. Loy,

Rear Admiral, U. S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90–19262 Filed 8–15–90; 8:45 am]

BILLING CODE 4910–14–M

[CGD 90–049]

National Offshore Safety Advisory Committee; Charter Renewal

SUMMARY: The Secretary of Transportation has approved the renewal of the Charter for the National Offshore Safety Advisory Committee

The purpose of this Committee is to advise the Commandant of the Coast Guard on matters and actions concerning the safety of activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within Coast Guard jurisdiction.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Pensivy, USCG, Executive Director, National Offshore Safety Advisory Committee (G–MP–2), room 2414, U.S. Coast Guard Headquarters, Washington, DC 20593–0001, (202) 267–1406.

Dated: August 9, 1990.

R.A. Appelbaum,

Rear Admiral, USCG, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90–19236 Filed 8–15–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[Delegation Order 29; Docket No. 90–14]

Order of Succession to Act as Comptroller

By virtue of the authority contained in 12 U.S.C. 4 and 4a, it is ordered as follows:

A. During a vacancy in the Office or during the absence or disability of the Comptroller, the following officers, or their duly-appointed successors, shall possess the power and perform the duties attached by law to the Office of the Comptroller of the Currency in the order of succession enumerated:

(1) Dean S. Marriott, Senior Deputy Comptroller for Bank Supervision Operations
(2) Susan F. Krause, Senior Deputy Comptroller for Bank Supervision Policy
(3) Judith A. Walter, Senior Deputy Comptroller for Administration
(4) Frank Maguire, Senior Deputy Comptroller for Legislative and Public Affairs
(5) J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs
(6) Paul Allan Schott, Chief Counsel
(7) Paul M. Homan, Senior Advisor to the Comptroller.

B. In the event of an enemy attack on the continental United States, all Deputy Comptrollers for the Districts, including any acting Deputy Comptrollers for the Districts, are authorized in their respective districts to perform any function of the Comptroller of the Currency, whether or not otherwise delegated, which is essential to carry out responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 28 is hereby repealed.

Dated: August 10, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90–19292 Filed 8–15–90; 8:45 am]

BILLING CODE 4810–33–M

Fiscal Service

[Dept. Circ. 570, 1990—Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Binford Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Binford Insurance Company, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25057, July 1, 1988. The Company's authority was suspended effective April 6, 1989, at 54 FR 14731, April 12, 1989.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: August 10, 1990.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 90–19220 Filed 8–15–90; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements for OMB review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting a three-year extension of a generic clearance under OMB Control Number 3116–0199, entitled "USIA-Supported Educational and Cultural Exchange Activities." The generic clearance is used in the information collecting activities among grantees and alumni/ae of USIA-funded educational and cultural exchange activities regarding program effectiveness. Estimated burden hours per response is thirty minutes. Respondents will be required to respond only one time.

DATES: September 17, 1990.

Copies: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: USIA Supproted Educational and Cultural Exchange Activities.

Form number: None.

Abstract: In the interest of sound program management, USIA undertakes the collection of information about program effectiveness necessary to the management and evaluation of USIA-funded educational and cultural exchange programs. USIA seeks clearance for these information collection activities among grantees and alumni/ae of these programs.

Proposed frequency of responses:

No. of Respondents—2,000,
Recordkeeping Hours—350,
Total Annual Burden—1,850.

Dated: August 9, 1990.

Louise Massoud,

Federal Register Liaison.

[FR Doc. 90–19258 Filed 8–15–90; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 159
Thursday, August 16, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 21, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 23, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This Meeting Will Be Open to the Public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes.
Final Audit Report—Gephardt For President Committee, Inc.
Advisory Opinion 1990–14: Michael Nemeroff on behalf of AT&T.
Advisory Opinion 1990–15: Kenneth B. Kramer.
Status of Presidential Audits.
Contingency Planning Under Graham-Rudman-Hollings Sequester.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 90–19448 Filed 8–14–90; 3:01 pm]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 55, No. 159
Thursday, August 16, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1990 Correlation

Correction

In notice document 90-17752 beginning on page 31090 in the issue of Tuesday, July 31, 1990, make the following corrections:

On page 31091, in the first column, in the second column of the table, make the following changes:

1. In the fourth line of the first, third, and fourth entries, insert "any" after "containing".

2. In the last line of the second, third, and fourth entries, delete "lace".

3. In the second and third lines of the third and fourth entries, delete "printed".

4. In the seventh entry, in the first line, "6302.21.1055" should read "6302.31.1055".

5. In the eighth entry, in the first line, "6302.21.2055" should read "6302.31.2055".

6. In the twelfth entry, in the fourth line, insert "by" before "weight".

7. In the second line of the sixteenth and seventeenth entries, "6104.50.1030" and "6104.50.1060" should read "6104.59.1030" and "6104.59.1060", respectively.

8. In the eighteenth entry, in the first line, "6104.59.2010" should read "6104.69.2010"; and in the second line, "6104.50.2030" should read "6104.69.2030".

9. In the nineteenth entry, in the second line, "6104.50.2060" should read "6104.69.2060".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0025]

Biological Resources, Inc.; Denial of Request for Hearing and Revocation of U.S. License No. 915

Correction

In notice document 90-17549 beginning on page 30752, in the issue of Friday, July 27, 1990, make the following correction:

On page 30754, in the first column, in the second complete paragraph, in the 15th line, "11" should be deleted.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0319]

Blood Collection Kits Labeled for Human Immunodeficiency Virus (HIV-1) Antibody Testing; Availability of a Letter for Interested Persons

Correction

In notice document 90-17659 beginning on page 30982, in the issue of Monday, July 30, 1990, make the following corrections:

1. On page 30982, in the second column, under **FOR FURTHER INFORMATION CONTACT:**, the last line, should read "301-443-5433."

2. On page 30983, in the first column, in the file line at the end of the document, "FR Doc 90-1765" should read "FR Doc 90-17659".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N-0257]

Studies of Adverse Effects of Marketed Drugs; Availability of Cooperative Agreements; Request for Applications

Correction

In notice document 90-16938 beginning on page 29669, in the issue of Friday, July 20, 1990, make the following correction:

On page 29669, in the third column, under **SUPPLEMENTARY INFORMATION:**, in the eighth line after "are" insert "not subject to the requirements of Executive Order 12372 and are".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90E-0124]

Determination of Regulatory Review Period for Purposes of Patent Extension; Diflucan®

Correction

In notice document 90-16939, beginning on page 29673 in the issue of Friday, July 20, 1990, make the following correction:

On page 29674, in the first column, in the sixth line, "January 11, 1990" should read "January 16, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 80

[CGD 89-068]

RIN 2115-AD44

International Regulations for Preventing Collisions at Sea; 1972 (COLREGS) Demarcation Lines

Correction

In rule document 90-18301 beginning

on page 31830 in the issue of Monday, August 6, 1990, make the following correction:

§ 80.815 [Corrected]

On page 31831 in the third column under § 80.815 in paragraph (g), in the sixth line, the latitude should read "29°44.1'N."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. 26305; Notice No. 90-18]

RIN 2120-AA09

Objects Affecting Navigable Airspace

Correction

In proposed rule document 90-18050 beginning on page 31722, in the issue of Friday, August 3, 1990, make the following correction:

On page 31722, in the first column, under **DATES:**, in the last line, "December 31, 1991." should read "December 31, 1990."

BILLING CODE 1505-01-D

federal register

Thursday
August 16, 1990

Part II

Department of Education

34 CFR Part 86

Drug-Free Schools and Campuses; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 86

RIN 1880-AA46

Drug-Free Schools and Campuses

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Drug-Free Schools and Communities Act Amendments of 1989, Public Law 101-226, require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE), State educational agency (SEA), or local educational agency (LEA) must certify that it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees. The purpose of these final regulations is to implement these statutory requirements. The regulations specify the content of the drug prevention program to be adopted and implemented; the nature of the certification requirements; the responses and sanctions to be applied for failure to comply with the requirements of this part; and the appeal process.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For information about these regulations and the certification process for SEAs, contact: Drug-Free Schools and Campuses Task Force, U.S. Department of Education, 400 Maryland Avenue, SW., room 4126, Washington, DC 20202-0499, telephone number: (202) 401-0709, or William H. Wooten (202) 401-0709.

For information about these regulations for IHEs, contact: Office of Policy Development, Office of Postsecondary Education, U.S. Department of Education, 7th & D Streets, SW., room 4060, Washington, DC 20202-5121, telephone number: (202) 708-9071, or Jerry M. Whitlock (202) 708-9071. For information about the certification process for IHEs, contact: Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, 7th & D Streets, SW., room 3916, Washington, DC 20202-5323, telephone number: (202) 708-7471, or Mary L. Jenkins (202) 708-7471.

SUPPLEMENTARY INFORMATION:

Additional Sources of Information

- *The National Institute on Drug Abuse Hotline*, 1-800-662-HELP, an information and referral line that directs callers to treatment centers in the local community;
- *The National Institute on Drug Abuse Workplace Helpline*, 1-800-843-4971, a line that provides information only to private entities about workplace programs and drug testing (This helpline will not assist SEAs, LEAs, or public IHEs.);
- *The National Clearinghouse for Alcohol and Drug Information*, 1-301-468-2600, an information and referral service that distributes Department of Education publications about drug and alcohol prevention programs, as well as material from other Federal agencies;
- *The Network of Colleges and Universities Committed to the Elimination of Drug and Alcohol Abuse*, 1-202-357-6206, was established in 1987 as a joint effort of the U.S. Department of Education and the higher education community for the purpose of developing an institutional response to the alcohol and other drug problems on campuses. As a means of self regulation, some 1,300 schools have adopted a set of Standards that were developed by the Network and reviewed, modified, and affirmed by the U.S. Department of Education. The Standards are designed to serve as education programs, assessment techniques, and enforcement procedures aimed at eradicating alcohol and other drug abuse on campuses, and may serve as a useful starting point for developing alcohol and other drug prevention programs that comply with these regulations. A copy of the Standards can be received by writing to the Network at the U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208-5644. Information can also be provided about training and conferencing activities, newly formed regional networks, and the IHEs in a particular State or region that are network members. IHEs are encouraged to contact network members in their State or region;
- *Department of Education Regional Centers Drug-Free Schools and Communities*, assist IHEs, SEAs, and LEAs in developing prevention programs by providing training and technical assistance. Addresses for the five centers are listed below.

Northeast Regional Center for Drug-Free Schools and Communities, 12 Overton Avenue, Sayville, NY 11782-0403, (516) 589-7022, serving Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont;

Southeast Regional Center for Drug-Free Schools and Communities, The Hurt Building, 50 Hurt Plaza, Suite 210, Atlanta, Georgia 30303, (404) 688-9227, serving Alabama, District of Columbia, Florida, Georgia, Kentucky, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia;

Midwest Regional Center for Drug-Free Schools and Communities, 2001 N. Clybourn, Suite 302, Chicago, IL 60614, (312) 883-8888, serving Indiana, Illinois, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin;

Southwest Regional Center for Drug-Free Schools and Communities, 555 Constitution Avenue, Norman, OK 73037, (405) 325-1454, serving Arizona, Arkansas, Colorado, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, and Utah; and

Western Regional Center for Drug-Free Schools and Communities, 101 SW. Main Street, Suite 500, Portland, OR 92704, (503) 275-9476 ((800) 547-6339 outside Oregon), serving Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Republic of Palau, Washington, and Wyoming.

Background

President Bush's National Drug Control Strategy issued in September 1989 proposed that the Congress pass legislation to require schools, colleges, and universities to implement and enforce firm drug prevention programs and policies as a condition of eligibility to receive Federal financial assistance. On December 12, 1989, the President signed the Drug-Free Schools and Communities Act Amendments of 1989 (Amendments), Public Law 101-226. Section 22 of the Amendments amends provisions of the Drug-Free Schools and Communities Act of 1986 and the Higher Education Act of 1965 to include these requirements.

On April 24, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for Drug-Free Schools and Campuses in the **Federal Register** (55 FR 17384).

In the preamble to the NPRM, the Secretary summarized the provisions of the proposed regulations. In addition, the Secretary provided "Appendix D—Questions and Answers" to address specific concerns about implementing a drug prevention program in compliance with the regulations, and to provide technical assistance to IHEs, SEAs, and

LEAs in complying with the statute. By and large, the questions and answers contained in appendix D to the NPRM have been incorporated in the discussion of public comments contained in appendix C to this document.

As a result of public comment, the Secretary has clarified the meaning of "student" for the purposes of the drug prevention program certification for IHEs and added a requirement that an IHE, SEA, or LEA seeking reinstatement after termination for violating these regulations must demonstrate that it has corrected the violation or violations on which the termination was based. The Secretary has also provided, in appendices A and B to this document, a description of the sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol, and a description of the health risks associated with the use of illicit drugs and the abuse of alcohol.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 94 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as appendix C to this document.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Some of the programs affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rule and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 86

Drug abuse, Education, Elementary and secondary education, Grant programs—education, Postsecondary education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: August 2, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 86, to read as follows:

PART 86—DRUG-FREE SCHOOLS AND CAMPUSES

Subpart A—General

Sec.

Subpart B—Institutions of Higher Education

Subpart C—State and Local Educational Agencies

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

Subpart E—Appeal Procedures

Authority: 20 U.S.C. 1145g, 3224a.

Subpart A—General

§ 86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

The purpose of the Drug-Free Schools and Campuses Regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which adds section 1213 to the Higher Education Act and section 5145 to the Drug-Free Schools and Communities Act. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher

education (IHE), State educational agency (SEA), or local educational agency (LEA) must certify that it has adopted and implemented a drug prevention program as described in this part.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.2 What Federal programs are covered by this part?

The Federal programs covered by this part include—

(a) All programs administered by the Department of Education under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance; and

(b) All programs administered by any other Federal agency under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.3 What actions shall an IHE, SEA, or LEA take to comply with the requirements of this part?

(a) An IHE, SEA, or LEA shall adopt and implement a drug prevention program as described in § 86.100 for IHEs, and §§ 86.200 and 86.201 for SEAs and LEAs, to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities.

(b) An IHE, SEA, or LEA shall provide a written certification that it has adopted and implemented the drug prevention program described in § 86.100 for IHEs, and §§ 86.200 and 86.201 for SEAs and LEAs.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.4 What are the procedures for submitting a drug prevention program certification?

(a) *IHE drug prevention program certification.* An IHE shall submit to the Secretary the drug prevention program certification required by § 86.3(b).

(b) *SEA drug prevention program certification.* An SEA shall submit to the Secretary the drug prevention program certification required by § 86.3(b).

(c) *LEA drug prevention program certification.*

(1) The SEA shall develop a drug prevention program certification form and a schedule for submission of the certification by each LEA within its jurisdiction.

(2) An LEA shall submit to the SEA the drug prevention program certification required by § 86.3(b).

(3)(i) The SEA shall provide to the Secretary a list of LEAs that have not submitted drug prevention program certifications and certify that all other LEAs in the State have submitted drug prevention program certifications to the SEA.

(ii) The SEA shall submit updates to the Secretary so that the list of LEAs described in paragraph (c)(3)(i) of this section is accurate at all times.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

(a) An IHE, SEA, or LEA that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE, SEA, or LEA receives or desires to receive assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

(a) After October 1, 1990, except as provided in paragraph (b) of this section, an IHE, SEA, or LEA is not eligible to receive funds or any other form of financial assistance under any Federal program until the IHE, SEA, or LEA has submitted a drug prevention program certification.

(b)(1) The Secretary may allow an IHE, SEA, or LEA until not later than April 1, 1991, to submit the drug prevention program certification, only if the IHE, SEA, or LEA establishes that it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(2) An IHE, SEA, or LEA that wants to receive an extension of time to submit its drug prevention program certification shall submit a written justification to the Secretary that—

(i) Describes each part of its drug prevention program, whether in effect or planned;

(ii) Provides a schedule to complete and implement its drug prevention program; and

(iii) Explains why it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(3)(i) An IHE or SEA shall submit a request for an extension to the Secretary.

(ii)(A) An LEA shall submit any request for an extension to the SEA.

(B) The SEA shall transmit any such request for an extension to the Secretary.

(C) The SEA may include with the LEA's request a recommendation as to whether the Secretary should approve it.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.7 What definitions apply to this part?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in this part are defined in the Act:

Drug abuse education and prevention
Illicit drug use

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77:

Department
EDGAR
Local educational agency
Secretary
State educational agency.

(c) *Other definitions.* The following terms used in this part are defined as follows:

Compliance agreement means an agreement between the Secretary and an IHE, SEA, or LEA that is not in full compliance with its drug prevention program certification. The agreement specifies the steps the IHE, SEA, or LEA will take to comply fully with its drug prevention program certification, and provides a schedule for the accomplishment of those steps. A compliance agreement does not excuse or remedy past violations of this part.

Institution of higher education means—

(1) An institution of higher education, as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education, as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution, as defined in 34 CFR 600.6; and

(4) A vocational school, as defined in 34 CFR 600.7.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart B—Institutions of Higher Education

§ 86.100 What must the IHE's drug prevention program include?

The IHE's drug prevention program must, at a minimum, include the following:

(a) The annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit except for continuing education units, regardless of

the length of the student's program of study, of—

(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(3) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

(4) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(5) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (a)(1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(b) A biennial review by the IHE of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (a)(5) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 1145g)

§ 86.101 What review of IHE drug prevention programs does the Secretary conduct?

The Secretary annually reviews a representative sample of IHE drug prevention programs.

(Authority: 20 U.S.C. 1145g)

§ 86.102 What is required of an IHE that the Secretary selects for annual review?

If the Secretary selects an IHE for review under § 86.101, the IHE shall provide the Secretary access to personnel, records, documents and any other necessary information requested by the Secretary to review the IHE's adoption and implementation of its drug prevention program.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 1145g)

§ 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

(a) Each IHE that provides the drug prevention program certification required by § 86.3(b) shall, upon request, make available to the Secretary and the public a copy of each item required by § 86.100(a) as well as the results of the biennial review required by § 86.100(b).

(b)(1) An IHE shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraph (a) of this section.

(ii) Any other records reasonably related to the IHE's compliance with the drug prevention program certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the IHE shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 1145g)

Subpart C—State and Local Educational Agencies

§ 86.200 What must the SEA's and LEA's drug prevention program for students include?

The SEA's and LEA's program for all students must, at a minimum, include the following:

(a) Age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for all students in all grades of the schools operated or served by the SEA or LEA, from early childhood level through grade 12.

(b) A statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful.

(c) Standards of conduct that are applicable to students in all the SEA's and LEA's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as part of any of its activities.

(d) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law), up to and including expulsion and referral for prosecution, will be imposed on students who violate the standards of conduct required by paragraph (c) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(e) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to students.

(f) A requirement that all parents and students be given a copy of the standards of conduct required by paragraph (c) of this section and the statement of disciplinary sanctions described in paragraph (d) of this section.

(g) Notification to parents and students that compliance with the standards of conduct required by paragraph (c) of this section is mandatory.

(h) A biennial review by the SEA or LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (d) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 3224a)

§ 86.201 What must the SEA's and LEA's drug prevention program for employees include?

The SEA's and LEA's program for all employees must, at a minimum, include the following:

(a) Standards of conduct applicable to employees that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as part of any of its activities.

(b) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law) up to and including termination of employment and referral for prosecution, will be imposed on employees who violate the standards of conduct required by paragraph (a) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(c) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to employees.

(d) A requirement that employees be given a copy of the standards of conduct required by paragraph (a) of this section and the statement of disciplinary

sanctions described in paragraph (b) of this section.

(e) Notification to employees that compliance with the standards of conduct required by paragraph (a) of this section is mandatory.

(f) A biennial review by the SEA and LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (b) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 3224a)

§ 86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

(a)(1) An SEA shall annually review a representative sample of LEA programs.

(2) If an SEA finds, as a result of its annual review, that an LEA has failed to implement its program or consistently enforce its disciplinary sanctions, the SEA shall submit that information, along with the findings of its review, to the Secretary within thirty (30) days after completion of the review.

(b) The Secretary may annually select a representative sample of SEA programs for review.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 3224a)

§ 86.203 What is required of an SEA or LEA that is selected for review?

(a) If the Secretary selects an SEA for review under § 86.202(b), the SEA shall provide the Secretary access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(b) If the SEA selects an LEA for review under § 86.202(a), the LEA shall provide the SEA access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(Authority: 20 U.S.C. 3224a)

§ 86.204 What records and information must an SEA or LEA make available to the Secretary and the public concerning its drug prevention program?

(a)(1) Each SEA that provides the drug prevention program certification shall, upon request, make available to the Secretary and the public full information about the elements of its drug prevention program, including the results of its biennial review required by §§ 86.200(h) and 86.201(f).

(2) The SEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the SEA's compliance with the certification.

(b)(1) Each LEA that provides the drug prevention program certification shall, upon request, make available to the Secretary, the SEA, and the public full information about the elements of its program, including the results of its biennial review required by §§ 86.200(h) and 86.201(f).

(2) The LEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the LEA's compliance with the certification.

(c)(1) Each SEA or LEA shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraphs (a) and (b) of this section.

(ii) Any other records related to the SEA's or LEA's compliance with the certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the SEA or LEA shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Approved by the Office of Management and Budget under control number 1880–0522)

(Authority: 20 U.S.C. 3224a)

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

§ 86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

An IHE, SEA, or LEA violates this part by—

(a) Receiving any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification in accordance with § 86.3(b); or

(b) Violating its certification. Violation of a certification includes failure of an IHE, SEA, or LEA to—

(1) Adopt or implement its drug prevention program; or

(2) Consistently enforce its disciplinary sanctions for violations by students and employees of the standards of conduct adopted by an IHE under § 86.100(a)(1) or by an SEA or LEA under §§ 86.200(c) and 86.201(a).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

(a) If an IHE, SEA, or LEA violates its certification, the Secretary may issue a response to the IHE, SEA, or LEA. A response may include, but is not limited to—

(1) Provision of information and technical assistance; and

(2) Formulation of a compliance agreement designed to bring the IHE, SEA, or LEA into full compliance with this part as soon as feasible.

(b) If an IHE, SEA, or LEA receives any form of Federal financial assistance without having submitted a certification or violates its certification, the Secretary may impose one or more sanctions on the IHE, SEA, or LEA, including—

(1) Repayment of any or all forms of Federal financial assistance received by the IHE, SEA, or LEA when it was in violation of this part; and

(2) The termination of any or all forms of Federal financial assistance that—

(i)(A) Except as specified in paragraph (b)(2)(ii) of this section, ends an IHE's, SEA's, or LEA's eligibility to receive any or all forms of Federal financial assistance. The Secretary specifies which forms of Federal financial assistance would be affected; and

(B) Prohibits an IHE, SEA, or LEA from making any new obligations against Federal funds; and

(ii) For purposes of an IHE's participation in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965 as amended, has the same effect as a termination under 34 CFR 668.94.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.302 What are the procedures used by the Secretary for providing information or technical assistance?

(a) The Secretary provides information or technical assistance to an IHE, SEA, or LEA in writing, through site visits, or by other means.

(b) The IHE, SEA, or LEA shall inform the Secretary of any corrective action it has taken within a period specified by the Secretary.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?

(a) If the Secretary intends to issue a response other than the formulation of a compliance agreement or the provision of information or technical assistance, the Secretary notifies the IHE, SEA, or LEA in writing of—

(1) The Secretary's determination that there are grounds to issue a response other than the formulation of a compliance agreement or providing information or technical assistance; and

(2) The response the Secretary intends to issue.

(b) An IHE, SEA, or LEA may submit written comments to the Secretary on the determination under paragraph (a)(1) of this section and the intended response under paragraph (a)(2) of this section within 30 days after the date the IHE, SEA, or LEA receives the notification of the Secretary's intent to issue a response.

(c) Based on the initial notification and the written comments of the IHE, SEA, or LEA, the Secretary makes a final determination and, if appropriate, issues a final response.

(d) The IHE, SEA, or LEA shall inform the Secretary of the corrective action it has taken in order to comply with the terms of the Secretary's response within a period specified by the Secretary.

(e) If an IHE, SEA, or LEA does not comply with the terms of a response issued by the Secretary, the Secretary may issue an additional response or impose a sanction on the IHE, SEA, or LEA in accordance with the procedures in § 86.304.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

(a) A designated Department official begins a proceeding for repayment of Federal financial assistance or termination, or both, of an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance by sending the IHE, SEA, or LEA a notice by certified mail with return receipt requested. This notice—

(1) Informs the IHE, SEA, or LEA of the Secretary's intent to demand repayment of Federal financial assistance or to terminate, describes the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(2) Specifies, as appropriate—

(i) The amount of Federal financial assistance that must be repaid and the date by which the IHE, SEA, or LEA must repay the funds; and

(ii) The proposed effective date of the termination, which must be at least 30 days after the date of receipt of the notice of intent; and

(3) Informs the IHE, SEA, or LEA that the repayment of Federal financial assistance will not be required or that the termination will not be effective on the date specified in the notice if the designated Department official receives, within a 30-day period beginning on the date the IHE, SEA, or LEA receives the notice of intent described in this paragraph—

(i) Written material indicating why the repayment of Federal financial assistance or termination should not take place; or

(ii) A request for a hearing that contains a concise statement of disputed issues of law and fact, the IHE's, SEA's, or LEA's position with respect to these issues, and, if appropriate, a description of which Federal financial assistance the IHE, SEA, or LEA contends need not be repaid.

(b) If the IHE, SEA, or LEA does not request a hearing but submits written material—

(1) The IHE, SEA, or LEA receives no additional opportunity to request or receive a hearing; and

(2) The designated Department official, after considering the written material, notifies the IHE, SEA, or LEA in writing whether—

(i) Any or all of the Federal financial assistance must be repaid; or

(ii) The proposed termination is dismissed or imposed as of a specified date.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart E—Appeal Procedures

§ 86.400 What is the scope of this subpart?

(a) The procedures in this subpart are the exclusive procedures governing appeals of decisions by a designated Department official to demand the repayment of Federal financial assistance or terminate the eligibility of an IHE, SEA, or LEA to receive some or all forms of Federal financial assistance for violations of this part.

(b) An Administrative Law Judge (ALJ) hears appeals under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.401 What are the authority and responsibility of the ALJ?

(a) The ALJ regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b) The ALJ is not authorized to issue subpoenas.

(c) The ALJ takes whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The scope of the ALJ's review is limited to determining whether—

(1) The IHE, SEA, or LEA received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification; or

(2) The IHE, SEA, or LEA violated its certification.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.402 Who may be a party in a hearing under this subpart?

(a) Only the designated Department official and the IHE, SEA, or LEA that is the subject of the proposed termination or recovery of Federal financial assistance may be parties in a hearing under this subpart.

(b) Except as provided in this subpart, no person or organization other than a party may participate in a hearing under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.403 May a party be represented by counsel?

A party may be represented by counsel.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.404 How may a party communicate with an ALJ?

(a) A party may not communicate with an ALJ on any fact at issue in the case or on any matter relevant to the merits of the case unless the other party is given notice and an opportunity to participate.

(b)(1) To obtain an order or ruling from an ALJ, a party shall make a motion to the ALJ.

(2) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(3) If a party files a written motion, the party shall do so in accordance with § 86.405.

(4) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(5) The date of service of a motion is determined by the standards for determining a filing date in § 86.405(d).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.405 What are the requirements for filing written submissions?

(a) Any written submission under this subpart must be filed by hand-delivery or by mail through the U.S. Postal Service.

(b) If a party files a brief or other document, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next Federal business day.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.406 What must the ALJ do if the parties enter settlement negotiations?

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or for the parties to obtain approval of a settlement agreement, the ALJ grants the stay.

(b) The following are not admissible in any proceeding under this part:

(1) Evidence of conduct during settlement negotiations.

(2) Statements made during settlement negotiations.

(3) Terms of settlement offers.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.407 What are the procedures for scheduling a hearing?

(a) If the IHE, SEA, or LEA requests a hearing by the time specified in § 86.304(a)(3), the designated Department official sets the date and the place.

(b)(1) The date is at least 15 days after the designated Department official receives the request and no later than 45 days after the request for hearing is received by the Department.

(2) On the motion of either or both parties, the ALJ may extend the period before the hearing is scheduled beyond the 45 days specified in paragraph (b)(1) of this section.

(c) No termination takes effect until after a hearing is held and a decision is issued by the Department.

(d) With the approval of the ALJ and the consent of the designated Department official and the IHE, SEA, or LEA, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.408 What are the procedures for conducting a pre-hearing conference?

(a)(1) A pre-hearing conference may be convened by the ALJ if the ALJ thinks that such a conference would be useful, or if requested by—

(i) The designated Department official; or

(ii) The IHE, SEA, or LEA.

(2) The purpose of a pre-hearing conference is to allow the parties to settle, narrow, or clarify the dispute.

(b) A pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.409 What are the procedures for conducting a hearing on the record?

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an ALJ.

(b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) The hearing process may be expedited as agreed by the ALJ, the designated Department official, and the IHE, SEA, or LEA. Procedures to expedite may include, but are not limited to, the following:

(1) A restriction on the number or length of submissions.

(2) The conduct of the hearing by telephone conference call.

(3) A review limited to the written record.

(4) A certification by the parties to facts and legal authorities not in dispute.

(d)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) The designated Department official has the burden of persuasion in any proceeding under this subpart.

(3)(i) The parties may agree to exchange relevant documents and information.

(ii) The ALJ may not order discovery, as provided for under the Federal Rules of Civil Procedure, or any other exchange between the parties of documents or information.

(4) The ALJ accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(e) The ALJ makes a transcribed record of any evidentiary hearing or oral argument that is held, and makes the record available to—

(1) The designated Department official; and

(2) The IHE, SEA, or LEA on its request and upon payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.410 What are the procedures for issuance of a decision?

(a)(1) The ALJ issues a written decision to the IHE, SEA, or LEA, the designated Department official, and the Secretary by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing if one is held; or

(iii) The date on which the ALJ terminates the hearing in accordance with § 86.401(c)(3).

(2) The ALJ's decision states whether the violation or violations contained in the Secretary's notification occurred, and articulates the reasons for the ALJ's finding.

(3) The ALJ bases findings of fact only on evidence in the hearing record and on matters given judicial notice.

(b)(1) The ALJ's decision is the final decision of the agency. However, the Secretary reviews the decision on request of either party, and may review the decision on his or her own initiative.

(2) If the Secretary decides to review the decision on his or her own initiative, the Secretary informs the parties of his or her intention to review by written notice sent within 15 days of the Secretary's receipt of the ALJ's decision.

(c)(1) Either party may request review by the Secretary by submitting a brief or written materials to the Secretary within 20 days of the party's receipt of the ALJ's decision. The submission must explain why the decision of the ALJ should be modified, reversed, or remanded. The other party shall respond within 20 days of receipt of the brief or written materials filed by the opposing party.

(2) Neither party may introduce new evidence on review.

(d) The decision of the ALJ ordering the repayment of Federal financial assistance or terminating the eligibility of an IHE, SEA, or LEA does not take effect pending the Secretary's review.

(e)(1) The Secretary reviews the ALJ's decision considering only evidence introduced into the record.

(2) The Secretary's decision may affirm, modify, reverse or remand the ALJ's decision and includes a statement of reasons for the decision.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.411 What are the procedures for requesting reinstatement of eligibility?

(a)(1) An IHE, SEA, or LEA whose eligibility to receive any or all forms of Federal financial assistance has been terminated may file with the Department a request for reinstatement as an eligible entity no earlier than 18 months after the effective date of the termination.

(2) In order to be reinstated, the IHE, SEA, or LEA must demonstrate that it has corrected the violation or violations on which the termination was based, and that it has met any repayment obligation imposed upon it under § 86.301(b)(1) of this part.

(b) In addition to the requirements of paragraph (a) of this section, the IHE, SEA, or LEA shall comply with the requirements and procedures for reinstatement of eligibility applicable to any Federal program under which it desires to receive Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Appendix A

Note: This appendix will not be codified in the Code of Federal Regulations.

This appendix contains a description of Federal trafficking (i.e., distribution) penalties for substances covered by the Controlled Substances Act (21 U.S.C. 811), and is taken from a Department of Justice publication entitled *Drugs of Abuse* (1989 Edition). Persons interested in acquiring the entire publication or in obtaining subsequent editions in the future should contact the Superintendent of Documents, Washington, DC 20402. This appendix also contains a description prepared by the Department of Justice of Federal penalties and sanctions for illegal possession of a controlled substance. Legal sanctions for the unlawful possession or distribution of alcohol are found primarily in State statutes.

The Department of Education is providing this information as an example of the minimum level of information that IHEs may provide to their students and employees in order to comply with the requirements in § 86.100(a)(2) of these regulations relating to the distribution to students and employees of a description of the applicable legal sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information. In future years, IHEs should distribute the most current editions of these documents that are available.

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Federal Trafficking Penalties

APPENDIX A.

CSA	PENALTY 2nd Offense	PENALTY 1st Offense	Quantity	DRUG	Quantity	PENALTY 1st Offense	PENALTY 2nd Offense
I and II	Not less than 10 years. Not more than life. If death or serious injury, not less than life. Fine of not more than $4 million individual, $10 million other than individual.	Not less than 5 years. Not more than 40 years. If death or serious injury, not less than 20 years. Not more than life. Fine of not more than $2 million individual, $5 million other than individual.	10-99 gm or 100-999 gm mixture	METHAMPHETAMINE	100 gm or more or 1 kg or more mixture	Not less than 10 years. Not more than life. If death or serious injury, not less than 20 years. Not more than life. Fine of not more than $4 million individual, $10 million other than individual.	Not less than 20 years. Not more than life. If death or serious injury, not less than life. Fine of not more than $8 million individual, $20 million other than individual.
			100-999 gm mixture	HEROIN	1 kg or more mixture		
			500-4,999 gm mixture	COCAINE	5 kg or more mixture		
			5-49 gm mixture	COCAINE BASE	50 gm or more mixture		
			10-99 gm or 100-999 gm mixture	PCP	100 gm or more or 1 kg or more mixture		
			1-10 gm mixture	LSD	10 gm or more mixture		
			40-399 gm mixture	FENTANYL	400 gm or more mixture		
			10-99 gm mixture	FENTANYL ANALOGUE	100 gm or more mixture		

	Drug	Quantity	First Offense	Second Offense
	Others[2]	Any	Not more than 20 years. If death or serious injury, not less than 20 years, not more than life. Fine $1 million individual, $5 million not individual.	Not more than 30 years. If death or serious injury, life. Fine $2 million individual, $10 million not individual.
III	All	Any	Not more than 5 years. Fine not more than $250,000 individual, $1 million not individual.	Not more than 10 years. Fine not more than $500,000 individual, $2 million not individual.
IV	All	Any	Not more than 3 years. Fine not more than $250,000 individual, $1 million not individual.	Not more than 6 years. Fine not more than $500,000 individual, $2 million not individual.
V	All	Any	Not more than 1 year. Fine not more than $100,000 individual, $250,000 not individual.	Not more than 2 years. Fine not more than $200,000 individual, $500,000 not individual.

[1] Law as originally enacted states 100 gm. Congress requested to make technical correction to 1 kg. [2] Does not include marijuana, hashish, or hash oil. (See separate chart.)

Federal Trafficking Penalties - Marijuana

As of November 18, 1988

Quantity	Description	First Offense	Second Offense
1,000 kg or more; or 1,000 or more plants	**Marijuana** Mixture containing detectable quantity*	Not less than 10 years, not more than life. If death or serious injury, not less than 20 years, not more than life. Fine not more than $4 million individual, $10 million other than individual.	Not less than 20 years, not more than life. If death or serious injury, not less than life. Fine not more than $8 million individual, $20 million other than individual.
100 kg to 1,000 kg; or 100-999 plants	**Marijuana** Mixture containing detectable quantity*	Not less than 5 years, not more than 40 years. If death or serious injury, not less than 20 years, not more than life. Fine not more than $2 million individual, $5 million other than individual.	Not less than 10 years, not more than life. If death or serious injury, not less than life. Fine not more than $4 million individual, $10 million other than individual.
50 to 100 kg	**Marijuana**	Not more than 20 years. If death or serious injury, not less than 20 years, not more than life. Fine $1 million individual, $5 million other than individual.	Not more than 30 years. If death or serious injury, life. Fine $2 million individual, $10 million other than individual.
10 to 100 kg	**Hashish**		
1 to 100 kg	**Hashish Oil**		
50-99 plants	**Marijuana**		
Less than 50 kg	**Marijuana**	Not more than 5 years. Fine not more than $250,000, $1 million other than individual.	Not more than 10 years. Fine $500,000 individual, $2 million other than individual
Less than 10 kg	**Hashish**		
Less than 1 kg	**Hashish Oil**		

*Includes Hashish and Hashish Oil

(Marijuana is a Schedule I Controlled Substance

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Federal Penalties and Sanctions for Illegal Possession of a Controlled Substance

21 U.S.C. 844(a)

1st conviction: Up to 1 year imprisonment and fined at least $1,000 but not more than $100,000, or both.

After 1 prior drug conviction: At least 15 days in prison, not to exceed 2 years and fined at least $2,500 but not more than $250,000, or both.

After 2 or more prior drug convictions: At least 90 days in prison, not to exceed 3 years and fined at least $5,000 but not more than $250,000, or both.

Special sentencing provisions for possession of crack cocaine: Mandatory at least 5 years in prison, not to exceed 20 years and fined up to $250,000, or both, if:

(a) 1st conviction and the amount of crack possessed exceeds 5 grams.

(b) 2nd crack conviction and the amount of crack possessed exceeds 3 grams.

(c) 3rd or subsequent crack conviction and the amount of crack possessed exceeds 1 gram.

21 U.S.C. 853(a)(2) and 881(a)(7)

Forfeiture of personal and real property used to possess or to facilitate possession of a controlled substance if that offense is punishable by more than 1 year imprisonment. (See special sentencing provisions re: crack)

21 U.S.C. 881(a)(4)

Forfeiture of vehicles, boats, aircraft or any other conveyance used to transport or conceal a controlled substance.

21 U.S.C. 844a

Civil fine of up to $10,000 (pending adoption of final regulations).

21 U.S.C. 853a

Denial of Federal benefits, such as student loans, grants, contracts, and professional and commercial licenses, up to 1 year for first offense, up to 5 years for second and subsequent offenses.

18 U.S.C. 922(g)

Ineligible to receive or purchase a firearm.

Miscellaneous

Revocation of certain Federal licenses and benefits, e.g. pilot licenses, public housing tenancy, etc., are vested within the authorities of individual Federal agencies.

Note: These are only Federal penalties and sanctions. Additional *State* penalties and sanctions may apply.

Appendix B

Note: This appendix will not be codified in the Code of Federal Regulations.

This appendix contains a description of health risks associated with substances covered by the Controlled Substances Act (21 U.S.C. 811), and is taken from a Department of Justice publication entitled *Drugs of Abuse* (1989 Edition). The appendix also includes a summary of health risks associated with alcohol, as described in *What Works: Schools Without Drugs* (1989 Edition), a Department of Education publication.

Persons interested in acquiring the publications or in obtaining subsequent editions in the future should contact the Superintendent of Documents, Washington, DC 20402, for *Drugs of Abuse*; and *Schools Without Drugs*, Pueblo, CO 81009, for *What Works: Schools Without Drugs*.

The Department of Education is providing this information as an example of the minimum level of information that IHEs may provide to their students and employees in order to comply with the requirement in § 86.100(a)(3) of these regulations relating to the distribution of the health risks associated with the use of illicit drugs and the abuse of alcohol. The Secretary considers this information as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information. If an IHE distributes this information in future years, it should use the most current editions of *Drugs of Abuse* and *Schools Without Drugs* that are available.

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Controlled Substances - *Uses & Effects*

DRUGS CSA SCHEDULES	TRADE OR OTHER NAMES	MEDICAL USES	DEPENDENCE Physical	DEPENDENCE Psychological	TOLERANCE	DURATION (Hours)	USUAL METHODS OF ADMINISTRATION	POSSIBLE EFFECTS	EFFECTS OF OVERDOSE	WITHDRAWAL SYNDROME
NARCOTICS										
Opium II III V	Dover's Powder, Paregoric, Parepectolin	Analgesic, antidiarrheal	High	High	Yes	3-6	Oral, smoked	Euphoria, drowsiness, respiratory depression, constricted pupils, nausea	Slow and shallow breathing, clammy skin, convulsions, coma, possible death	Watery eyes, runny nose, yawning, loss of appetite, irritability, tremors, panic, cramps, nausea, chills and sweating
Morphine II III	Morphine, MS-Contin, Roxanol, Roxanol-SR	Analgesic, antitussive	High	High	Yes	3-6	Oral, smoked, injected			
Codeine II III V	Tylenol w/Codeine, Empirin w/Codeine, Robitussan A-C, Fiorinal w/Codeine	Analgesic, antitussive	Moderate	Moderate	Yes	3-6	Oral, injected			
Heroin I	Diacetylmorphine, Horse, Smack	None	High	High	Yes	3-6	Injected, sniffed, smoked			
Hydromorphone II	Dilaudid	Analgesic	High	High	Yes	3-6	Oral, injected			
Meperidine (Pethidine) II	Demerol, Mepergan	Analgesic	High	High	Yes	3-6	Oral, injected			
Methadone II	Dolophine, Methadone, Methadose	Analgesic	High	High-Low	Yes	12-24	Oral, injected			
Other Narcotics I II III IV V	Numorphan, Percodan, Percocet, Tylox, Tussionex, Fentanyl, Darvon, Lomotil, Talwin[2]	Analgesic, antidiarrheal, antitussive	High-Low	High-Low	Yes	Variable	Oral, injected			
DEPRESSANTS										
Chloral Hydrate IV	Noctec	Hypnotic	Moderate	Moderate	Yes	5-8	Oral	Slurred speech, disorientation, drunken behavior without odor of alcohol	Shallow respiration, clammy skin, dilated pupils, weak and rapid pulse, coma, possible death	Anxiety, insomnia, tremors, delirium, convulsions, possible death
Barbiturates II III IV	Amytal, Butisol, Fiorinal, Lotusate, Nembutal, Seconal, Tuinal, Phenobarbital	Anaesthetic, anticonvulsant, sedative, hypnotic, veterinary euthanasia agent	High-Mod.	High-Mod.	Yes	1-16	Oral			
Benzodiazepines IV	Ativan, Dalmane, Diazepam, Librium, Xanax, Serax, Valium, Tranxene, Verstran, Versed, Halcion, Paxipam, Restoril	Antianxiety, anticonvulsant, sedative, hypnotic	Low	Low	Yes	4-8	Oral			
Methaqualone I	Quaalude	Sedative, hypnotic	High	High	Yes	4-8	Oral			
Glutethimide III	Doriden	Sedative, hypnotic	High	Moderate	Yes	4-8	Oral			
Other Depressants III IV	Equanil, Miltown, Noludar, Placidyl, Valmid	Antianxiety, sedative, hypnotic	Moderate	Moderate	Yes	4-8	Oral			
STIMULANTS										
Cocaine[1] II	Coke, Flake, Snow, Crack	Local anesthetic	Possible	High	Yes	1-2	Sniffed, smoked, injected	Increased alertness, excitation, euphoria, increased pulse rate & blood pressure, insomnia, loss of appetite	Agitation, increase in body temperature, hallucinations, convulsions, possible death	Apathy, long periods of sleep, irritability, depression, disorientation
Amphetamines II	Biphetamine, Delcobase, Desoxyn, Dexedrine, Obetrol	Attention deficit disorders, narcolepsy, weight control	Possible	High	Yes	2-4	Oral, injected			
Phenmetrazine II	Preludin	Weight control	Possible	High	Yes	2-4	Oral, injected			
Methylphenidate II	Ritalin	Attention deficit disorders, narcolepsy	Possible	Moderate	Yes	2-4	Oral, injected			
Other Stimulants III IV	Adipex, Cylert, Didrex, Ionamin, Melfiat, Plegine, Sanorex, Tenuate, Tepanil, Prelu-2	Weight control	Possible	High	Yes	2-4	Oral, injected			
HALLUCINOGENS										
LSD I	Acid, Microdot	None	None	Unknown	Yes	8-12	Oral	Illusions and hallucinations, poor perception of time and distance	Longer, more intense "trip" episodes, psychosis, possible death	Withdrawal syndrome not reported
Mescaline and Peyote I	Mexc, Buttons, Cactus	None	None	Unknown	Yes	8-12	Oral			
Amphetamine Variants I	2,5-DMA, PMA, STP, MDA, MDMA, TMA, DOM, DOB	None	Unknown	Unknown	Yes	Variable	Oral, injected			
Phencyclidine II	PCP, Angel Dust, Hog	None	Unknown	High	Yes	Days	Smoked, oral, injected			
Phencyclidine Analogues I	PCE, PCPy, TCP	None	Unknown	High	Yes	Days	Smoked, oral, injected			
Other Hallucinogens I	Bufotenine, Ibogaine, DMT, DET, Psilocybin, Psilocyn	None	None	Unknown	Possible	Variable	Smoked, oral, injected, sniffed			
CANNABIS										
Marijuana I	Pot, Acapulco Gold, Grass, Reefer, Sinsemilla, Thai Sticks	None	Unknown	Moderate	Yes	2-4	Smoked, oral	Euphoria, relaxed inhibitions, increased appetite, disoriented behavior	Fatigue, paranoia, possible psychosis	Insomnia, hyperactivity, and decreased appetite occasionally reported
Tetrahydrocannabinol I II	THC, Marinol	Cancer chemotherapy antinausea	Unknown	Moderate	Yes	2-4	Smoked, oral			
Hashish I	Hash	None	Unknown	Moderate	Yes	2-4	Smoked, oral			
Hashish Oil I	Hash Oil	None	Unknown	Moderate	Yes	2-4	Smoked, oral			

[1] Designated a narcotic under the CSA [2] Not designated a narcotic under the CSA

APPENDIX B.

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Alcohol

Effects

Alcohol consumption causes a number of marked changes in behavior. Even low doses significantly impair the judgment and coordination required to drive a car safely, increasing the likelihood that the driver will be involved in an accident. Low to moderate doses of alcohol also increase the incidence of a variety of aggressive acts, including spouse and child abuse. Moderate to high doses of alcohol cause marked impairments in higher mental functions, severely altering a person's ability to learn and remember information. Very high doses cause respiratory depression and death. If combined with other depressants of the central nervous system, much lower doses of alcohol will produce the effects just described.

Repeated use of alcohol can lead to dependence. Sudden cessation of alcohol intake is likely to produce withdrawal symptoms, including severe anxiety, tremors, hallucinations, and convulsions. Alcohol withdrawal can be life-threatening. Long-term consumption of large quantities of alcohol, particularly when combined with poor nutrition, can also lead to permanent damage to vital organs such as the brain and the liver.

Mothers who drink alcohol during pregnancy may give birth to infants with fetal alcohol syndrome. These infants have irreversible physical abnormalities and mental retardation. In addition, research indicates that children of alcoholic parents are at greater risk than other youngsters of becoming alcoholics.

Appendix C—Analysis of Comments and Responses

Note: This appendix will not be codified in the Code of Federal Regulations.

In response to the Secretary's invitation in the NPRM, 94 parties submitted comments on the proposed regulations. An analysis of the comments follows:

Subpart A—General

§ 86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

Entities Affected by These Regulations

Comments: A commenter asked how community-based organizations are affected by the Drug-Free Schools and Campuses regulations.

Discussion: The Act requires only IHEs, SEAs, and LEAs to submit the certification; thus, community-based organizations are not required to submit the certification. If a community-based organization provides Federal funds to IHEs, SEAs, or LEAs, the organization should determine whether or not the IHE, SEA, or LEA has submitted a drug prevention program certification before providing Federal funds. See the discussion in this appendix under § 86.3 explaining how the Department will identify those IHEs, SEAs, and LEAs that have not submitted certifications.

Changes: None.

Applicability of These Requirements to Private Elementary and Secondary Schools

Comments: Several commenters asked whether nonpublic schools are required to submit a drug prevention program certification. Commenters questioned the applicability of the Drug-Free Schools and Campuses regulations to nonpublic schools; one commenter had difficulty reconciling the absence of a requirement for nonpublic schools to submit a drug prevention program certification with the requirement found in some Federal programs that an SEA or LEA must provide for the equitable participation of pupils from nonpublic schools. One commenter suggested that the regulations include a requirement for the equitable participation of nonpublic school pupils in the SEA's or LEA's drug prevention program.

Discussion: The statute identifies IHEs, SEAs, and LEAs as the entities that must submit certification of a drug prevention program in order to remain eligible to receive funds or any other form of financial assistance under any Federal program. Definitions of these entities can be found in § 86.7 of the regulations. Certification requirements apply only to IHEs, SEAs, and LEAs.

SEAs and LEAs may allow nonpublic school pupils to participate in the SEA's or LEA's age-appropriate, developmentally based drug and alcohol education and prevention programs required under § 86.200(a) of the regulations. To the extent those programs are funded under a Federal program that requires the equitable participation of nonpublic school pupils, such as part B of the Drug-Free Schools and Communities Act of 1986, SEAs and LEAs must provide for the equitable participation of nonpublic school pupils in projects and activities supported by that Federal program. Furthermore, to the extent that an SEA or LEA conducts a Federally funded drug prevention program or any other Federal program that requires the equitable participation of pupils from nonpublic schools *(e.g.,* chapter 1 of title I of the Elementary and Secondary Education Act), participating pupils from nonpublic schools will be subject to the standards of conduct, disciplinary sanctions, and other elements of the SEA's or LEA's drug prevention program (§ 86.200 (b) through (h)) during periods of time when the pupils are under the direct supervision and control of the SEA or LEA. Disciplinary sanctions imposed upon nonpublic school pupils by SEAs and LEAs must be limited to the pupil's participation in the SEA or LEA program.

Changes: None.

Federal Control Over Curriculum

Comment: Commenters expressed concern that in implementing Public Law 101–226 the Department not have any direct involvement in curriculum decisions at the local school level.

Discussion: Public Law 101–226 specifically provides that its statutory requirements apply notwithstanding the requirements in section 432 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232a) and section 103(b) of the Department of Education Organization Act (20 U.S.C. 3403(b)), which prohibit the Secretary from exercising "any direction, supervision, or control" over curriculum decisions at the local school level in connection with the administration of Federal education programs. Section 86.200(a) requires LEAs to adopt and implement a drug prevention program but does not prescribe a particular drug prevention curriculum. Instead, local school districts are afforded broad discretion in designing a drug prevention program that responds to local needs as determined by local education officials.

Changes: None.

§ 86.4 What are the procedures for submitting a drug prevention program certification?

Transmission of Certification Form

Comment: A commenter asked if the Department will permit electronic transmissions of drug prevention program certifications.

Discussion: The Department does not currently have the resources to permit electronic transmission of drug prevention program certifications. The Department will mail the certification form to IHEs and SEAs in August, 1990; IHEs and SEAs should submit that form by mail or courier service by the suggested date of September 4, 1990 in order to ensure that there will be no interruption in the flow of Federal financial assistance. In order to process the more than 9,000 certifications that the Department expects to receive from IHEs, the IHE certification will be bar coded so that it is machine readable.

The Secretary will consider the possibility of electronic transmission of certifications in the future as technological developments permit.

Changes: None.

One-Time Submission of Certifications

Comment: A commenter suggested that the regulations state explicitly that an IHE, SEA, or LEA is required to submit a drug prevention program certification only once.

Discussion: Generally, each IHE, SEA, or LEA is required to submit a drug prevention program certification only once. The drug prevention program certification forms for IHEs and SEAs do not limit the certification to a particular school year or other period of time. There are circumstances, however, under which a new certification may be required, such as change of ownership of an IHE or division or consolidation of an LEA. The Secretary believes that it is preferable to address the issue of new certifications in guidance to the affected entities rather than in the regulations.

Changes: None.

Relationship of Certification to Funding Under the Drug-Free Schools and Communities Act

Comment: One commenter understood the regulations to require resubmission of a drug prevention program certification if an LEA does not apply for funding under the Drug-Free Schools and Communities Act and suggested that it would be unfair to tie the receipt of Federal monies to the completion of an application for funds under Part B of the Drug-Free Schools and Communities Act.

Discussion: Under these regulations, receipt of any Federal funds is tied to the submission of a drug prevention program certification, not to an application for funds under the Drug-Free Schools and Communities Act. An LEA is not required under these regulations to fund its drug prevention program from Federal sources such as Part B of the Drug-Free Schools and Communities Act. Consequently, an LEA is not required to resubmit a drug prevention program certification if the LEA chooses not to apply for funding under the Drug-Free Schools and Communities Act.

Changes: None.

Informing Other Federal Agencies of Which IHEs, SEAs, and LEAs Have Submitted Certifications

Comment: A commenter inquired whether the certification requirement applied to receipt of funds from Federal agencies other than the Department of Education and, if so, whether the Department would "administer" the certifications for other Federal agencies. Several commenters wanted to know how the Department will inform other Federal agencies of the names of the IHEs, SEAs, or LEAs that have submitted a drug prevention program certification or been granted an extension of time to submit the certification.

Discussion: The certification requirement is a statutory requirement applying to receipt of all Federal financial assistance, not just Federal financial assistance administered by the Department. Consistent with Public Law 101–226, the Department will send out the certification form to all IHEs and SEAs eligible to participate in its programs.

Rather than listing those IHEs, SEAs, and LEAs that have submitted drug prevention program certifications or been granted extensions of time to submit those certifications, the Department will submit a list of those entities that have *not* submitted a certification or received an extension to the General Services Administration for inclusion in its "List of Parties Excluded from Federal Procurement or Nonprocurement Programs." Unless an IHE, SEA, or LEA appears on this list, Federal agencies and other interested parties can consider the IHE, SEA, or LEA eligible, for the purposes of the Drug-Free Schools and Campuses regulations, to receive Federal financial assistance.

Changes: None.

Relationship to Drug-Free Workplace and Other Certifications

Comments: A commenter suggested that the Department consider developing a single database of required certifications, and sending all certification forms to each IHE, SEA, or LEA at one time, rather than requiring separate submissions. Another commenter wanted amendments to § 86.1 to create a consolidation of these regulations and the Drug-Free Workplace Act certification. Several commenters sought clarification on whether compliance with these regulations would supersede or replace Drug-Free Workplace Act requirements.

Discussion: The Department has been attempting, where possible, to consolidate certifications. For example, the Drug-Free Workplace certification for use beginning in fiscal year 1991 is now combined on one form with the Lobbying and the Debarment and Suspension certifications.

Because of the differences between the requirements of Public Law 101–226 and its regulations and the requirements of the Drug-Free Workplace Act and its regulations, it is not practicable to combine these two certifications. Moreover, compliance with the Drug-Free Schools and Campuses regulations does not supersede or replace compliance with the Drug-Free Workplace Act.

The certification requirement in these Drug-Free School and Campuses regulations applies only to IHEs, SEAs, and LEAs. The certification requirement in the Drug-Free Workplace Act applies not only to IHEs, SEAs, and LEAs but also to all recipients of Federal grants, including individuals.

The Drug-Free Workplace Act prohibits any Federal department or agency from making a grant to an institutional grantee unless the grantee submits a certification that it will provide a drug-free workplace. The Drug-Free Workplace Act also prohibits any Federal department or agency from making a grant to an individual in the absence of a required certification. Final regulations for the Drug-Free Workplace Act were issued by Federal agencies on May 25, 1990 (55 FR 21681).

Under the Drug-Free Workplace Act, the certification submitted by a grantee (other than an individual) relates to conduct in the grantee's workplace and thus pertains only to its employees. Virtually the only students to which the Drug-Free Workplace Act certification requirement applies are Pell grant recipients who, as individuals receiving a Federal grant, are required to certify that they will not engage in any illicit drug-related activity during the period of their Pell grant. These Drug-Free Schools and Campuses regulations, on the other hand, apply to students as well as employees insofar as an IHE, SEA, and LEA is required to develop and implement a drug prevention program for both students and employees. However, under these Drug-Free Schools and Campuses regulations, individual students are not required to submit a certification; the certification requirement applies only to IHEs, SEAs, and LEAs.

Employee use of alcohol is not addressed in the Drug-Free Workplace Act. The certification under these Drug-Free Schools and Campuses regulations relates to the illicit use of alcohol as well as drugs.

Under the Drug-Free Workplace Act, the certification must be submitted only by an entity or individual that receives a grant or contract directly from the Federal government; the certification is not required of subgrantees or contractors under a grant. Under these Drug-Free Schools and Campuses

regulations the certification requirements apply whether the agency or institution is applying directly to the Federal government, or is applying for a subgrant or contract from a grantee that has received a Federal grant, such as an LEA applying to an SEA for Federal funds.

The Drug-Free Workplace Act requires an IHE, SEA, or LEA to establish an on-going drug-free awareness program with certain specified components, notify employees of certain conditions of employment, including notification of the employer in writing by an employee convicted of a drug-related offense, and take certain specified actions if an employee is convicted of a drug-related offense. In contrast, these Drug-Free Schools and Campuses regulations require annual distribution to students and employees of certain information, and the formulation of standards of conduct, without specifying that certain actions must be taken if an employee or student is convicted of a drug- and alcohol-related offense.

Because of these separate requirements in each statute, compliance with one cannot be equated with compliance with the other. Moreover, the Drug-Free Workplace certification must be submitted with each application for a grant or contract; the Drug-Free Schools and Campuses certification is generally a one-time certification. Thus, it is not possible to consolidate the Drug-Free Workplace and the Drug-Free Schools and Campuses certifications.

Changes: None.

Responsibility To Notify LEAs of Requirements

Comment: One commenter suggested that the regulations should include a requirement that LEAs be notified of their responsibilities under the statute and regulations.

Discussion: The Secretary agrees that LEAs should be notified of their responsibilities under the statute and regulations. Since the statute makes SEAs responsible for administering LEA certification, the Secretary believes that SEAs should, as a matter of course, notify LEAs of their responsibilities under the statute and regulations.

Changes: None.

Requirement for SEA To Develop Forms and Procedures for LEA Certifications

Comments: One commenter suggested that the requirement for SEAs to develop forms and procedures for LEA certification should be dropped and that SEAs should not be required to identify LEAs that have not submitted certification forms. The commenter believed that these requirements result in an unnecessarily early submission of certification by LEAs and, further, that the SEA reporting process does not provide for possible reporting errors such as listing of an LEA as not having submitted a certification when in fact the LEA had done so, or failure of an SEA to submit its own certification after having received proper certifications from LEAs. The commenter would rely upon State review to discover whether LEAs have a program that fulfills the statutory requirements.

Discussion: In order to remain eligible to receive funds or any other form of financial assistance under any Federal program, an LEA must submit a certification to the SEA that it has adopted and implemented a drug prevention program. The Secretary needs to know which LEAs have not certified in order to ensure that they do not receive Federal financial assistance from any source after October 1, 1990. The Secretary believes that the most efficient means to accomplish this is to require SEAs to identify LEAs that have not submitted certification forms. Under this procedure, an earlier submission date for LEAs is unavoidable.

Waiting for an SEA review to discover which LEAs have not submitted a drug prevention program certification increases the likelihood that Federal financial assistance will be provided to ineligible LEAs and could result in the imposition of disciplinary sanctions on LEAs, up to and including the return of all Federal funds received during the period in which the LEA was not eligible to receive Federal financial assistance.

Prior to declaring an SEA or LEA ineligible to receive funds or any other form of financial assistance under any Federal program, the Secretary intends to verify whether that SEA or LEA has submitted a certification. The SEA reporting process is designed to assist the Secretary in identifying SEAs and LEAs that have not submitted the certification.

Changes: None.

§ 86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

Receipt of Federal Funds

Comment: A commenter sought clarification on the effect of an IHE's, SEA's, or LEA's failure to submit a drug prevention program certification, and asked whether ineligibility to "receive" Federal funds means the same thing as inability to obligate funds.

Discussion: The effect of an IHE's, SEA's, or LEA's loss of eligibility to receive Federal funds, including the ability to obligate funds, is governed by the applicable program statute and regulations. For example, the effect of an IHE's ineligibility to receive funds under the Federal student financial assistance programs authorized by title IV of the Higher Education Act of 1965, as amended, is governed by the Student Assistance General Provisions regulations in 34 CFR 668.94.

Changes: None.

Definition of Federal Financial Assistance

Comment: A commenter requested a description of the forms of Federal financial assistance for which an IHE, SEA, or LEA that fails to submit a drug prevention program might become ineligible. Another commenter suggested that the Department should clarify that an IHE's drug prevention program is an institution-wide responsibility because these rules affect all possible Federal funds received by an IHE, not just Federal student financial assistance programs, and all students and employees. The commenter was concerned that IHEs might delegate compliance with these regulations to their financial aid offices.

Discussion: A definition of Federal financial assistance is unnecessary because Public Law 101–226 applies to all forms of Federal financial assistance. Some examples are grants, contracts, participation in federally financed or guaranteed loan programs, and participation in school breakfast or lunch programs. The Secretary agrees with the second commenter that in view of the broad applicability of these requirements, implementation of the drug prevention program must be institution-wide. However, the Secretary believes that each IHE should determine which offices within the IHE should have responsibility for implementation.

Changes: None.

§ 86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

Timing of Submission of Drug Prevention Program Certification

Comments: Numerous commenters expressed concerns about the October 1, 1990, effective date of these requirements and the Department's suggested September 4, 1990, deadline for submission of the drug prevention program certification. Commenters felt that the effective date should be delayed or extensions granted freely upon self-

certification by the agency or institution that it had satisfied the statutory requirements for an extension of time. Among the reasons given by the commenters for the need for delay for IHEs were the need for issuance of the final regulations and certification forms, negotiation requirements under the National Labor Relations Act (NLRA), the expense of printing materials in addition to those that have already been prepared for fall semester orientation of students, the need to develop the written materials, such as the descriptions of health risks and legal sanctions, and the need to involve students and employees in amending the campus judicial code and employee handbooks. For LEAs, commenters cited the lack of administrators working over the summer in rural school districts, the need for time to create a high-quality program, and the need for time to develop policies and obtain school board approval.

Related to these concerns, commenters also asked for clarification about the degree to which an IHE, SEA, or LEA must have implemented its drug prevention program before the certification is signed and submitted. Commenters asked for interpretations of the certification to the effect that an IHE by October 1, 1990, must have developed required materials but need not have actually distributed them, have in place a schedule for review of its disciplinary policies but need not have actually completed the process of amending its standards of conduct, begun negotiation with labor unions but need not have completed its negotiations, or simply have in effect an implementation plan.

Discussion: As was explained in question four of appendix D to the NPRM, the Secretary believes that Congress intended the required drug prevention programs and policies to be in effect for school year 1990–91 to the extent feasible. Moreover, this is a realistic expectation; Public Law 101–226, the provisions of which are generally clear and understandable, was enacted December 12, 1989, and proposed rules were published on April 24, 1990. In addition, certain elements of these programs—such as the distribution of required documents—are discrete tasks that, in most instances, can be accomplished before, or at the same time, the certification is submitted. For these reasons, any request for extension of time to submit a drug prevention program certification must include a written justification as required in § 86.6(b)(2) of this part, in order to provide a basis for evaluation by the Secretary.

Because of the wide variety of institutions involved, and the unique circumstances that affect many of these institutions, it is not possible to identify with precision which steps an institution must have taken to implement its programs and policies prior to the date of the certification or October 1, 1990. However, general guidance is possible: The Secretary believes that institutions must have adopted the programs and policies required by the regulations and have taken significant steps to implement those programs and policies before their certification is submitted. Further, the Secretary believes that the certification must represent a good faith commitment on the part of the certifying institution to complete implementation of its programs and policies as quickly as feasible during school year 1990–91, consistent with the purposes of Public Law 101–226. If, in order to implement its drug prevention program for employees, an IHE, SEA, or LEA is required by the NLRA or State law to negotiate changes to a labor agreement, the IHE, SEA, or LEA may submit the certification if it has developed the components of its drug prevention program affecting employees, including the standards of conduct and disciplinary sanctions, and if it has actually begun the negotiation process and has a plan for prompt completion of that process.

Changes: None.

Review of LEA Extension Requests

Comment: One commenter understood the regulations to require SEAs to review LEAs' requests for extension of time to submit a drug prevention program certification. The commenter also questioned what would happen to LEAs whose extension requests were still being processed as of October 1, 1990, and whether there would be any appeal rights if a request for extension of time is denied.

Discussion: Section 86.6 does not require SEAs to review LEA requests for extension of time to submit a drug prevention program certification. The SEA may, however, forward to the Secretary with an LEA's request for an extension a recommendation as to whether the Secretary should approve the LEA's request.

The Secretary announced in 55 FR 17402 (April 24, 1990) that extension requests received by the Secretary after August 1, 1990, would not be considered. The Secretary anticipates that all requests received by August 1, 1990, will be processed prior to October 1, 1990. The regulations do not provide for an appeal if a request for extension of time is denied.

Changes: None.

Subpart B—Institutions of Higher Education

§ 86.100 What must the IHE's drug prevention program include?

Selective Applicability/Implementation

Comment: A commenter expressed the view that the regulations should require that each IHE assess the level of the drug and alcohol problem on its campus, and that an IHE be required to implement a drug prevention program only where rates of illicit drug and alcohol use exceed a particular level. Other commenters also suggested that each IHE perform an institutional self-evaluation and then determine whether it is appropriate to provide students with the information required by this section or to take other measures.

Discussion: Though the regulations do not require institutional self-evaluation, the Secretary agrees that those evaluations can be a useful first step in addressing illicit drug use and alcohol abuse and encourages IHEs to undertake those evaluations. However, Public Law 101–226 requires that each IHE, in order to receive Federal financial assistance implement all aspects of the drug prevention program described in this section, and the Secretary has no authority to waive compliance with this requirement.

Changes: None.

Applicability of Certification Requirement to Proprietary Schools Under New Ownership

Comment: Several commenters asked for clarification on whether a new owner of a proprietary school will be required to submit a certification.

Discussion: The Secretary intends to treat this certification requirement similarly to other certification requirements applicable to IHEs. An IHE with a new owner would be required to submit a drug prevention program certification only if, under 34 CFR 600.31, there has been a change of ownership resulting in a change of control, and the Secretary determines that the IHE under new ownership does not meet the requirements to be considered the same IHE as under previous ownership.

Changes: None.

Applicability of Certification Requirement to State Agencies That Receive and Allocate Federal Funds to IHEs

Comment: A commenter asked whether a State agency such as a State Board of Vocational, Technical, and

Adult Education that receives and allocates Federal funds to IHEs, is required to submit the certification.

Discussion: Only IHEs, SEAs, or LEAs as defined in § 86.7 are required to submit a drug prevention program certification. Unless the State agency itself meets one of those definitions, it is not required to submit a certification.

Changes: None.

Additional Material Recommended for Certification

Comment: A commenter thought that each IHE should be required, as part of its drug prevention program, to describe its drug prevention program design and plan for implementation, identify the individuals who will plan and implement the program, list their qualifications, specify, the percentage of time they will spend on implementing the drug prevention program and identify the administrative structure under which they will function. Another commenter recommended adding a requirement that each IHE identify and provide an employee assistance program and student assistance program.

Discussion: In implementing their drug prevention programs, IHEs may choose to adopt the commenters' suggestions; however, under these regulations they are not required to do so. The Secretary believes that beyond meeting the statutory requirements for its drug prevention program, each IHE should have the discretion to determine what, if any, additional aspects of a program it should implement. The statute and regulations impose minimum requirements for drug prevention programs, and the Secretary encourages IHEs to implement appropriate additional aspects of their drug prevention programs.

Changes: None.

Burden of Distributing Materials to All Students and Employees

Comments: Numerous IHEs protested that annual distribution in writing of the materials required by this subparagraph to each student and employee will be expensive and burdensome, and that individual written notices are not the most effective means of communication. Some commenters pointed out that the phrase "in writing" does not appear in the Act and wanted to satisfy the requirements of the Act by holding assemblies or simply posting notices of the availability of the materials. Other commenters wanted clarification on whether including the materials in campus publications or handing out materials to those who care to take them would satisfy the distribution requirement. An IHE asked about its liability if it mailed the materials, and they were returned as undeliverable because of a bad address. Commenters also asked if, after the initial distribution of materials, IHEs could distribute the materials only to new students and employees. A commenter also wanted to select one date in the academic year and distribute materials only on that date; this commenter did not want to have to distribute materials to new students enrolling for subsequent academic terms in that year.

A number of commenters asked that the regulations define "student". These commenters did not want to have to distribute the drug prevention program materials to everyone who came into "instructional contact" with an IHE; for example, continuing education students, participants in alumni enrichment activities, and children participating in activities in the IHE's facilities.

Finally, an IHE asked if it could send only the standards of conduct to each student along with a notification that the information on legal sanctions and health risks was available on request. Another IHE suggested that rather than sending out long technical documents, concise summaries should be provided.

Discussion: Public Law 101–226 specifies that each IHE must distribute the required materials to each student and employee. While the phrase "in writing" does not appear in the statute, the Secretary believes that in order to ensure that each student has access to and can refer to the required materials, they must be in writing. If an IHE wished also to hold assemblies or post notices about its drug prevention program, it is free to do so, but it must also distribute the required materials in writing to each student and employee. Including the materials in campus publications such as student or employee handbooks is acceptable, as long as the publications are distributed to each student and employee.

An IHE should determine the most effective method for ensuring that the required materials are distributed to each student and employee. However, the method chosen should be one that will reach every student and employee, such as a method for distributing grade reports or pay checks. Merely making the materials available to those who wish to take them does not satisfy the requirements of Public Law 101–226 or the regulations, because it does not ensure distribution to each student and employee of the IHE. If an IHE uses mailing as its means of distribution and the mailing to a particular student is returned, the IHE should use the method it normally would to locate and deliver a mailing to a particular student under those circumstances.

Public Law 101–226 requires annual distribution to all students and employees. Thus, an IHE must distribute the materials each year to each student and employee, not just to new students and employees. If new students enroll or new employees are hired after the initial distribution in the academic year, these students and employees must also receive the materials. However, the Secretary agrees that the term "student" should be clarified so that only students taking one or more classes for academic credit are considered "students" for purposes of these regulations.

Notification to students about the availability of materials is not sufficient; the actual materials must be distributed. However, the Secretary agrees that long technical documents may not be the most effective way of communicating with students and employees. A concise summary, with references to longer technical documents, may be appropriate. Guidance as to the level of detail expected for the various types of materials is discussed below.

Changes: Language clarifying that only students who are taking one or more classes for any type of academic credit except for continuing education units are covered by the certification has been added to § 86.100.

Treatment of Alcohol in an IHE's Standards of Conduct

Comment: An IHE thought that alcohol, which is a legal substance, should be treated differently from illicit drugs in its standards of conduct so that IHEs can teach their students the responsible drinking of alcoholic beverages.

Discussion: Public Law 101–226 and regulations require that an IHE's standards of conduct, at a minimum, prohibit "the *unlawful* possession, use or distribution of illicit drugs or alcohol" (emphasis added). Thus, an IHE's standards of conduct must prohibit unlawful activities associated with alcohol, including prohibition against use by students who are under-age. The regulations do not, however, specify what standards of conduct an IHE must adopt toward lawful activities associated with alcohol; these standards are left to the discretion of the IHE.

Changes: None.

"Activities" To Be Covered by Standards of Conduct

Comment: An IHE suggested clarifying that the term "activities" applies to all on-campus and officially sponsored off-campus activities,

including field trips, but not to student-sponsored social activities or to professional meetings attended by employees. A second IHE noted that the answer to question 6 in appendix D to the NPRM states that only off-campus activities that are part of IHE-sponsored activities are covered. This commenter asked how the standards of conduct required under these regulations affects Pell grant certifications under the Drug-Free Workplace Act, which apply to any activity during the period covered by the Pell grant.

Discussion: The standards of conduct must prohibit, at a minimum, the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees on school premises or property, or as part of any of its activities. Thus, the term "activities" does apply to all on-campus and off-campus activities that are considered to be school activities, such as officially sanctioned field trips. The standards of conduct must also apply to student-sponsored social activities or professional meetings attended by employees, if these activities or meetings are considered IHE-sponsored activities.

Under the Drug-Free Workplace Act, a Pell grant recipient must certify that he or she will not engage in any activity involving illicit drugs during the period covered by the Pell grant; thus, the certification may apply to activities that are not sponsored by the IHE, such as off-campus nonacademic pursuits. The scope of the Pell grant certification is therefore broader than the required scope of the standards of conduct. An IHE is not required under these regulations to establish standards of conduct for activities unrelated to its students' attendance at an IHE, though there is nothing in the regulations prohibiting it from doing so.

Changes: None.

Description of Legal Sanctions Should Be Provided

Comments: A number of commenters asked for assistance with preparation of a description of applicable legal sanctions. Most wanted the Department to provide a description of the sanctions under Federal law. Many also wanted the Department to provide descriptions of State and local laws, as well. Commenters asked for clarification as to how detailed the description should be.

Discussion: A description of the sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol is contained in appendix A to this document. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information.

Obtaining descriptions of State and local sanctions is the responsibility of the IHE. The Secretary suggests that IHEs may want to coordinate with other IHEs in their locality and State to avoid duplication of effort in obtaining this information. The description of Federal sanctions included in appendix A can provide guidance as to the minimum level of detail for the description of sanctions under State and local laws.

Changes: None.

Description of Health Risks Should Be Provided

Comments: A number of commenters asked for assistance with preparation of a description of the health risks associated with the use of illicit drugs and the abuse of alcohol. Most commenters wanted the Department to provide a description of health risks. Commenters asked for clarification as to how detailed the description should be.

Discussion: A description of the health risks associated with the use of illicit drugs and the abuse of alcohol is contained in appendix B to this document. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information.

Changes: None.

Clarification on Description of Health Risks

Comments: Several comments were submitted asking for clarification on various aspects of the description of health risks associated with the use of illicit drugs and the abuse of alcohol. An IHE wanted a definition of the abuse of alcohol. Another commenter asked if IHEs were required to list health risks of drugs commonly abused on their campuses or for entire classes of drugs. A third commenter inquired whether illicit drugs means only controlled substances or includes the abuse of drugs that are otherwise legal, noting that it would be difficult to describe risks attached to otherwise legal drugs.

Discussion: The definition of abuse of alcohol is within the discretion of the IHE. The description of health risks in appendix B provides guidance on the minimum level of detail required should an IHE wish to prepare its own description of health risks. IHEs are encouraged to provide at least a general discussion of the health risks associated with the abuse of otherwise legal drugs, but are not required to provide a detailed description of these risks.

Changes: None.

Clarification on Description of Available Counseling, Treatment, or Rehabilitation Programs

Comments: An IHE wanted the required description of any drug or alcohol counseling, treatment, or rehabilitation programs available to students and employees to be limited to on-campus programs, and merely provide directions on obtaining information about off-campus resources. Another IHE wanted to provide no description at all, and merely make this information available on an as-needed basis.

Discussion: An IHE must provide each student and employee with a description of any programs available on-campus. An IHE should provide a description of off-campus programs, but is required to do so only if no on-campus programs are available.

Changes: None.

Description of Disciplinary Sanctions

Comments: A commenter asked if an IHE could just list the sanctions that might be imposed for violations of the standards of conduct, or whether the statement must describe what sanctions will be applied for each type of offense. Another commenter recommended that the description consist of a summary in nontechnical language, rather than a specific description of the sanctions to be imposed.

Discussion: The Secretary believes that it is important that students and employees know what penalties may be imposed by an IHE for violation of the IHE's standards of conduct. The description should identify the sanctions or range of sanctions that will be imposed for a particular violation of the standards of conduct.

Changes: None.

Enforcement Role of IHEs

Comment: Several IHEs objected to the requirement that IHEs impose sanctions on students who violate rules prohibiting illicit drug and alcohol possession or distribution on the grounds that the regulation assigned a law enforcement or *in loco parentis* role to IHEs that they felt was inappropriate.

Discussion: The regulatory requirement that IHEs distribute a clear statement that they will impose disciplinary sanctions for violations of the IHE's standards of conduct, and consistently enforce those sanctions, are found in Public Law 101–226. The Secretary has no authority to change the requirement.

Changes: None.

Discretion of IHEs

Comment: Several IHEs felt that having to specify particular disciplinary sanctions for each offense restricts an IHE's discretion to consider the severity of each incident and the prior disciplinary history of the student or employee. Another commenter felt that threats of disciplinary and legal sanctions could interfere with the professional approach of IHE medical personnel in their counseling and medical practice.

Discussion: The regulations require a clear statement that the IHE will impose disciplinary sanctions for violations of its standards of conduct, and consistent enforcement of those sanctions, but they do not prevent an IHE from considering the circumstances surrounding an offense. Nor do the regulations require medical or counseling personnel employed by an IHE to refer a student or employee for disciplinary action or prosecution. The Secretary also notes that completion of a rehabilitation program may be one of the disciplinary sanctions imposed by an IHE.

Changes: None.

Referral for Prosecution

Comment: Several IHEs asked if all violations of their standards of conduct must be referred to law enforcement officials for prosecution. A commenter also asked if referral for prosecution conflicts with the Family Education Rights and Privacy Act (FERPA), sometimes referred to as the Buckley Amendment.

Discussion: Under these regulations, it is up to the discretion of the IHE to decide which violations of its standards of conduct to refer for prosecution.

FERPA requires educational agencies and institutions that receive Federal funds under applicable programs to engage in certain record-keeping practices intended to give students access to their records and to prohibit release of these records in certain circumstances without the permission of the student. *See* 20 U.S.C. 1232g.

Under an exception to FERPA, the records of a law enforcement unit established by an IHE to enforce campus security are not considered "education records" as defined by FERPA if the law enforcement unit does not have access to the education records of the IHE, and the IHE does not have access to the law enforcement unit's records. (20 U.S.C. 1232g(a)(4)(B)(ii)). Under these conditions, the law enforcement unit may refer violations for prosecution.

IHEs should be aware that FERPA applies only to records, not to individual observations. Therefore, an IHE may adopt a policy requiring staff, faculty, and students to report violations to the police. However, any record of the IHE related to the reported violation could not be provided to the police or other law enforcement officials.

Changes: None.

"Consistent With Local, State and Federal Law"

Comment: Several commenters stated that the requirement that an IHE impose disciplinary sanctions on its students and employees "consistent with local, State and Federal law" was not clear. They sought clarification as to whether this phrase referred to criminal law relating to drug and alcohol abuse or to constitutional law protecting rights of defendants, which is problematic for private IHEs who do not regard themselves as state actors. Another commenter asked if this phrase also refers to laws relating to discrimination regarding handicaps, since alcoholism is treated as a handicap under some of these statutes.

Discussion: Public Law 101–226 requires IHEs to impose disciplinary sanctions, but only those disciplinary sanctions that are otherwise authorized by local, State or Federal laws. To the extent that an IHE is currently bound by antidiscrimination statutes, contract law, and constitutional protections, it will continue to be bound by those laws.

Changes: None.

Meaning of "Effectiveness"

Comment: Commenters sought clarification on what "effectiveness" means in the context of the biennial review to determine the effectiveness of an IHE's drug prevention program. Commenters also asked what documentation of evaluation of effectiveness would be acceptable. An IHE assumed that it would be up to each IHE to determine its own criteria for effectiveness. Another IHE thought a sophisticated sociological model was needed because multiple variables affecting drug and alcohol use would make it impossible to measure the effectiveness of an IHE's drug prevention program in isolation.

Discussion: Recognizing the variety of drug prevention programs that IHEs will develop to comply with these regulations, the Secretary does not specify particular criteria or measures to gauge program effectiveness beyond requiring that evaluations of program effectiveness do not rely solely on anecdotal observations. To the extent possible, the Secretary encourages, but does not require, IHEs to use objective measures that would allow an institution to track the use levels of alcohol and other drugs by students and employees.

Because collection of data that bears directly on the issue of incidence and prevalence of drug use can be costly and difficult to collect, IHEs may want to consider the use of other measures that could include, but are not limited to:

- tracking the number of drug- and alcohol-related disciplinary sanctions imposed;
- tracking the number of drug- and alcohol-related referrals for counseling or treatment;
- tracking the number of drug- and alcohol-related incidents recorded in the logs of campus police or other law enforcement officials;
- tracking the number of drug- and alcohol-related incidents of vandalism;
- tracking the number of students or employees attending self-help or other counseling groups related to alcohol or drug abuse; and
- tracking student, faculty and employee attitudes and perceptions about the drug and alcohol problem on campus.

Changes: None.

Consistent Enforcement of Disciplinary Sanctions

Comments: A commenter felt that requiring consistent enforcement of disciplinary sanctions would prevent a student judicial system from deciding appropriate sanctions on the facts of each case. Another commenter felt that in requiring consistent enforcement, the regulations should take into account the different positions at an IHE of students, faculty, and staff, and the limited authority of the IHE over students and faculty.

Discussion: The Secretary does not believe that consistent enforcement precludes an IHE from considering the circumstances surrounding each case or imposing different sanctions on students, faculty and staff. An IHE must, however, treat similarly situated offenders in a similar manner.

Changes: None.

§ 86.101 What review of IHE drug prevention programs does the Secretary conduct?

Representative Sample

Comment: A commenter asked how the Secretary will choose representative samples of IHE drug prevention programs for review and recommended that the sample be chosen geographically. Another commenter felt that the reviews should not be conducted as part of reviews of an IHE's

administration of the Federal student financial aid programs under title IV of the Higher Education Act, but instead by the Drug-Free Schools and Campuses Task Force.

Discussion: The Department is studying various means of choosing the representative sample of IHE drug prevention programs for review. Choosing a sample geographically or conducting reviews as part of title IV reviews are only several of the types of samples under discussion.

Changes: None.

Distribution of Drug Prevention Program Materials

Comment: An IHE recommended that the Department facilitate the exchange and distribution of campus-developed materials collected as part of the review process to provide assistance to all IHEs.

Dicussion: The Secretary agrees that exchange of materials developed for IHE drug prevention programs is a good practice. The Network of Colleges and Universities Committed to the Elimination of Drug and Alcohol Abuse, established as a joint effort of the Department of Education and the higher education community for the purpose of developing an institutional response to the alcohol and other drug problems on campuses, has agreed to act as a facilitator for distribution of these materials.

Changes: None.

§ 86.102 What is required of an IHE that the Secretary selects for annual review?

The Department's Access to Information and Records

Comment: Several commenters were concerned that release of personnel, medical or counseling records to Department reviewers might violate Federal, State, or local laws concerning access to records. Commenters also noted that under campus disciplinary codes and faculty hearing mechanisms, many student and faculty records are considered confidential; these commenters felt that the Department should be prepared to issue subpoenas for these records in order to protect IHEs from third party liability.

Discussion: Authorized representatives of the Secretary may have access to education records of students as necessary to enforce the Federal legal requirements related to the receipt of funds under Federally-supported education programs without violating the privacy rights of students under the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. 1232g (b)(1)(C) and (b)(3). However, unless collection of the information is specifically authorized by Federal law, the provision of FERPA that authorizes this disclosure requires that the personally identifiable information collected from those records must be protected so as not to disclose the identity of the students to anyone other than the officials involved in the monitoring, auditing, or enforcement action. Further, whenever the records are no longer required for the purposes for which they were collected, the records must be destroyed. Any monitoring or auditing by Federal or other education officials will be done in conformance with these requirements, which are more than adequate to protect the privacy of students.

Regarding access to records of IHE personnel, FERPA provides that authorized representatives of the Secretary and the Comptroller General of the United States shall have access to any records, including personnel records, of a recipient of Federal financial assistance that may be related to the compliance of the recipient with a requirement of any applicable program. Therefore, the Secretary may have access to any records, including personnel records, which relate to compliance with Public Law 101-226.

Changes: None.

§ 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

What Records Must Be Kept

Comments: Several IHEs sought clarification as to what records must be maintained to confirm annual distribution of materials to students and employee. In particular, an IHE wanted to know if it is necessary to maintain signed documentation of receipt of materials for each student.

Discussion: An IHE is not required to obtain from each student and employee a signed statement that the IHE has provided the student or employee with the materials required by these regulations. At a minimum, an IHE must maintain a copy of materials distributed, and any additional materials made available to students and employees, records indicating that these materials were distributed to each of the IHE's students and employees, and the results of the IHE's annual evaluation of its drug prevention program.

Changes: None.

Subpart C—State and Local Educational Agencies

§ 86.200 What must the SEA's and LEA's drug prevention program for students include?

Applicability of This Subpart to Certain IHEs

Comment: A State Board of Vocational, Technical and Adult Education that operates vocational, technical and adult education, districts that have been certified as institutions of higher education under 34 CFR part 600 asked if these districts are required to meet the certification requirements for SEAs and LEAs as well.

Discussion: Only those entities that meet the definitions of "SEA" and "LEA" in § 86.7 are required to submit the certification required under this subpart.

Changes: None.

Additional Material Recommended for Certification

Comment: A commenter recommended adding the requirement that each SEA and LEA, as a part of its drug prevention program, identify and provide an employee and student assistance program.

Discussion: SEAs and LEAs may choose to implement the commenters' suggestions; however, under these regulations they are not required to do so. The Secretary believes that beyond meeting the statutory requirements for its drug prevention program, each SEA and LEA should have the discretion to determine what, if any, additional aspects of a program it should implement. The statute and regulations impose only minimum requirements for drug prevention programs, and the Secretary encourages SEAs and LEAs to implement additional aspects of drug prevention programs as appropriate.

Changes: None.

Early Childhood Level Prograns

Comment: One commenter asked whether an LEA is required to design an early childhood level drug and alcohol education and prevention program if the LEA does not operate an early childhood level program and, further, whether an LEA is required to design a drug prevention program for pupils in Head Start.

Discussion: An LEA is not required to design an early childhood level drug and alcohol education and prevention program if the LEA does not operate an early childhood level program. If the LEA itself operates a Head Start program or other early childhood education program, however, the LEA

would need to have an early childhood level component in its drug prevention program.

Changes: None.

Frequency/Means of Distribution of Materials to Parents and Students

Comment: Commenters wanted clarification on the frequency with which parents, students and employees must be given copies of required materials and notified that compliance with the standards of conduct is mandatory. In addition, commenters questioned what would constitute adequate notification. One commenter thought that existing channels such as parent handbooks and school newsletters should be used for notification; that separate notification should not be required; and that verbal notification should be allowed as an alternative to written notification for elementary and ungraded students.

Discussion: The Secretary believes that it would be most effective for SEAs and LEAs to distribute annually the materials required by §§ 86.200 and 86.201. In addition, compliance with the distribution requirements could be easily documented with an annual distribution. However, if an SEA or LEA intends to maintain detailed documentation to show how the SEA or LEA has satisfied the distribution requirements, a less frequent distribution of materials may be possible.

The regulations do not require a separate dissemination of information. Existing channels, such as parent handbooks, that are designed to reach every parent and student are acceptable means of dissemination. The Secretary believes that verbal notification is an appropriate means of notifying very young students or students who are unable to read. However, all other students and all parents should receive written materials.

Changes: None.

§ 86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

Periodic Reviews by SEAs

Comment: One commenter, in response to the requirement in § 86.202(a)(1) that SEAs annually review a representative sample of LEA programs, suggested that SEAs be given discretion to decide whether the statutory requirement for periodic review means annual review.

Discussion: The review process is designed to provide information on whether LEAs have properly implemented drug prevention programs. In order to make the review process effective, the Secretary has determined that the reviews must be conducted annually.

Changes: None.

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

§ 86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

Basis for Sanctions

Comment: An IHE commented that failure to consistently enforce disciplinary sanctions for violations of an IHE's standards of conduct should be eliminated as a basis for sanctions; disciplinary sanctions should be based on the facts of each individual case and not reviewed by the Department.

Discussion: Consistent enforcement of disciplinary sanctions is a statutory requirement and thus failure to consistently enforce those sanctions cannot be eliminated as a possible violation. However, nothing in these regulations precludes an IHE, SEA or LEA from basing disciplinary sanctions on the circumstances of each individual case. See the discussion under § 86.100, "Consistent enforcement of disciplinary sanctions," in this Appendix.

Changes: None.

Suggested Limits on the Imposition of Particular Sanctions by the Secretary

Comments: A commenter believed these regulations should specify that repayment of Federal funds or termination will not be imposed during an initial period of noncompliance, unless the Department has previously attempted alternative means to resolve an IHE's noncompliance, an IHE is a repeat offender, or the Department determines that an IHE was acting in bad faith or attempting to deceive the Department. Several other commenters advocated that an IHE that submits a certification "in good faith" should be able to rely on the Department's acceptance of its certification and not be obligated to repay funds if the Department later determines that a drug prevention program is "technically deficient."

Discussion: Repayment of Federal funds or termination are only part of a range of responses and sanctions that the Secretary may impose if an IHE, SEA, or LEA violates this part. The type of response or sanction the Secretary will impose will depend on the severity of the violation. It is likely that the Secretary would give an IHE, SEA, or LEA an opportunity to correct less serious violations through the provision of technical assistance or by entering into a compliance agreement. However, the Secretary has no authority to waive compliance with the certification requirements.

Changes: None.

§ 86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

Coordination With Other Federal Agencies

Comment: Several commenters asked how the Department would inform other agencies when it imposed sanctions on an IHE, SEA, or LEA. One commenter felt that other agencies should have input into the Department's choice of sanctions, particularly if the sanctions of repayment of Federal funds or termination would affect participation in programs that benefit children, such as the School Lunch Program. Another commenter wanted to know, if the sanction of repayment of Federal funds is imposed, which Federal agency would receive the funds, and how the distribution of repaid funds would be coordinated.

Discussion: The Department will submit the names of those entities that have been terminated from receiving some or all forms of Federal financial assistance for violations of this part to the General Services Administration for inclusion in its "List of Parties Excluded from Federal Procurement or Nonprocurement Programs."

The Secretary agrees that other Federal agencies should be consulted as to the Department's choice of sanctions; the Department is in the process of determining how those consultation procedures would operate. The Department is also in the process of determining how the repayment procedures would operate, and will work through intra-governmental channels to coordinate repayment with other Federal agencies.

Changes: None.

Repayment of Funds

Comment: A commenter suggested that repayment of any or all forms of Federal financial assistance received by an IHE, SEA, or LEA when it was in violation of this part should not be included as a sanction because it is not specifically authorized by Public Law 101-226.

Discussion: Section 86.301 includes among the specified sanctions the "repayment of any or all forms of Federal financial assistance received by the IHE, SEA, or LEA when it was in violation of this part." Public Law 101-226 provides that an IHE or LEA shall

not be "eligible" to receive financial assistance under any Federal program unless it makes the required certification. The traditional remedy available to the government if an entity that is ineligible receives Federal funds is a demand for repayment of those funds. Indeed, a Federal agency is generally obliged to seek the repayment of funds committed to its administration in situations where an ineligible entity has received them. 51 Dec. Comp. Gen. 162 (1971).

The absence in Public Law 101–226 of language repeating this principle does not signify that Congress intended that it should not apply if an entity fails to file the requisite certification but nevertheless receives Federal funds. On the contrary, Public Law 101–226 authorizes the Secretary to impose a range of responses and sanctions, "including [provision of] information and technical assistance, the development of a compliance agreement, and the termination of any form of Federal financial assistance." While this list does not specifically authorize repayment of Federal financial assistance received by an IHE, SEA, or LEA when it was in violation of this part, the use of the word "including" indicates Congressional intent that the Secretary have the discretion to issue or impose additional responses and sanctions. Under these circumstances, the inclusion in the regulations of provisions for repayment of funds is both authorized and consistent with Public Law 101–226 and general principles of law.

Changes: None.

Debarment and Suspension

Comment: A commenter questioned why the proposed regulations do not include debarment or suspension as sanctions to be imposed by the Secretary under this subpart.

Discussion: The Secretary does not believe it is necessary to prescribe suspension and debarment as additional sanctions. The regulations already provide for termination, which has much the same effect as debarment, and was specifically included as a possible sanction in Public Law 101–226.

Changes: None.

Effect of Sanctions on Consortia

Comment: A commenter asked whether sanctions imposed on an IHE would affect an IHE's participation in a Federally funded consortium.

Discussion: An IHE may be sanctioned by termination of any or all forms of Federal financial assistance, which could include Federal funds received through participation in a consortium. In those circumstances, an IHE may continue to participate in a Federally funded consortium only if the IHE does not receive Federal financial assistance through the consortium.

Changes: None.

§ 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

Comment: A commenter interpreted the regulations as authorizing the Secretary to impose a sanction while an appeal to an Administrative Law Judge (ALJ) is pending, and suggested that the regulations provide a "show cause" procedure so that an IHE, SEA, or LEA can respond to the Department before a sanction is imposed.

Discussion: The regulations specifically provide, in §§ 86.304(a)(3) and 86.407(c), that repayment of Federal financial assistance will not be required or that termination will not be effective on the date specified by the Secretary if the IHE, SEA, or LEA submits a timely request for a hearing. Thus, sanctions will not be imposed while an appeal is pending. A "show cause" procedure is therefore unnecessary.

Changes: None.

Subpart E—Appeal Procedures

Applicability of GEPA/Secretarial Review of ALJ Decisions

Comment: Several commenters criticized the proposed regulations because, in their view, the regulations improperly limited the power of ALJs in appeal proceedings by not authorizing them to, among other things, order discovery or issue subpoenas, and by making the decision of an ALJ reviewable by the Secretary. In this regard, the commenters said that the proposed regulations were arguably inconsistent with part E of the General Education Provisions Act (GEPA), relating to the enforcement of grant terms and conditions, and that the provisions of the proposed regulations authorizing the Secretary to review ALJ decisions were arguably inconsistent with the "plain meaning" of Public Law 101–226.

Discussion: The appeal procedures in subpart E of the regulations are designed to produce a swift but fair resolution of disputes arising out of Departmental decisions to demand the repayment of Federal financial assistance or to terminate the eligibility of an IHE, SEA, or LEA. In no sense are these procedures intended to limit arbitrarily the powers of the ALJs; in fact, the procedures are modeled on the fine, limitation, suspension, and termination proceedings for IHEs in subpart G of 34 CFR part 668, which are themselves conducted by ALJs, because of the greater similarity of such proceedings to those appeals expected to arise under the Drug-Free Schools and Campuses certification program. The provisions of part E of GEPA do not govern appeals unless the Secretary, acting under section 451(a) of GEPA, designates such proceedings accordingly, and there is nothing in the text or legislative history of Public Law 101–226 that indicates a Congressional intent, or even expectation, that this would be done. To the contrary, section 22 of Public Law 101–226 broadly commands the Secretary, "to publish regulations to implement and enforce," the certification requirements it contains. In addition, the fact that certain of the appeal provisions specified in section 22 (timing of hearings; availability of Secretarial review of ALJ decisions) differ on their face from their counterparts in part E suggests that wholesale incorporation of the latter provisions was not intended.

The regulations in subpart E of part 86 authorize, but do not require, the Secretary to review ALJ decisions. The preamble to the NPRM (55 FR 17386 (April 24, 1990)) explained that an interpretation of the statute that prohibited Secretarial review would ignore two fundamental rules of statutory construction, namely that statutes should, as far as possible, be read to harmonize with related statutes and to avoid constitutional difficulties. In fact, such an interpretation would produce a result that is not only unprecedented within the Department's experience and inconsistent with the organic statutes that govern the operations of the Department, but would also be subject to serious constitutional question under the Appointments Clause. Particularly in the absence of any clear evidence that Congress intended such an unlikely result, the Secretary believes that the purposeful interpretation offered in the NPRM is the better reading of the law.

Changes: A clarifying change has been made to § 86.410(b)(1) to conform more closely to the language of the statute.

§ 86.400 What is the scope of this subpart?

Failure To Submit Certification

Comment: An IHE expressed the view that the hearing procedures in this

subpart should apply to failure to submit certification.

Discussion: The hearing procedures do apply if the Secretary proposes to impose a sanction on an IHE, SEA, or LEA that received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification. However, the hearing procedures do not apply to the Secretary's determination that an IHE, SEA, or LEA is ineligible to receive Federal financial assistance because of failure to submit a certification. Because the statute gives no discretion in this matter, there would be no reason for a hearing if an IHE, SEA, or LEA becomes ineligible for failure to submit a certification.

Changes: None.

§ 86.402 Who may be a party in a hearing under this subpart?

Comment: A commenter suggested that Federal agencies should be parties to hearings under this subpart if the other parties agree; the commenter believed that participation by Federal agencies could assist in settlement negotiations.

Discussion: The only issues to be decided by an ALJ in a hearing under this subpart are: (1) Whether an IHE, SEA, or LEA received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification; or (2) whether the IHE, SEA, or LEA violated its certification. These are issues with which other Federal agencies would not be familiar, and thus there would be no purpose served by their participation.

Changes: None.

§ 86.405 What are the requirements for filing written submissions?

Comment: An IHE suggested that the means of communication in proceedings under this subpart should include telefacsimile and express mail.

Discussion: The Secretary considers both express mail and courier services to be forms of hand delivery, and are thus permitted means of communication under this subpart. Because of the problems with ensuring that a telefacsimile is actually received, submission by telefacsimile cannot be permitted at this time.

Changes: None.

§ 86.410 What are the procedures for issuance of a decision?

Judicial Review

Comment: A commenter felt that the regulations should state that the final decision of the Secretary is subject to judicial review, presumably under the Administrative Procedure Act.

Discussion: Public Law 101–226 is silent on the issue of judicial review and therefore it is governed by the Administrative Procedure Act. Because the Secretary cannot regulate on the issue of judicial review, the Secretary does not believe it is necessary or appropriate to address the issue in these regulations.

Changes: None.

§ 86.411 What are the procedures for requesting reinstatement of eligibility?

Comments: A number of commenters objected to the requirement that an IHE, SEA, or LEA wait 18 months after the effective date of a termination to apply for reinstatement as an eligible entity. Several commenters suggested that an IHE, SEA, or LEA be permitted to reapply on demonstration of compliance with this part, rather than after a specified period of time, and that there was no legal basis for an 18-month period before reinstatement of eligibility. Commenters felt that the 18-month period was "punitive" and could interfere with Federally-funded research and hurt low income students who need financial aid.

Discussion: The Secretary believes that Public Law 101–226, in authorizing termination as a possible sanction, gives the Secretary the discretion to determine an appropriate length of time before an IHE, SEA, or LEA may be reinstated. The Secretary also believes that an 18-month period before reinstatement is appropriate. For termination to have any effect, it must last for a substantial period of time. The 18-month period is the same as termination for other violations by an IHE, and the Secretary considers violations of this part as serious as violations of the Federal student financial assistance regulations. The Secretary agrees, however, that demonstration of compliance is a necessary criterion for determining if a terminated institution should be reinstated as eligible.

Changes: A requirement has been added to § 86.411(a) that an IHE, SEA, or LEA that has been terminated for violations of this part demonstrate compliance with this part before it can be reinstated.

[FR Doc. 90–19259 Filed 8–15–90; 8:45 am]
BILLING CODE 4000–01–M

federal register

Thursday
August 16, 1990

Part III

Copyright Royalty Tribunal

37 CFR Part 308

Adjustment of the Syndicated Exclusivity Surcharge; Final Rule; Final Determination

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 308

[CRT Docket No. 89-5-CRA]

Adjustment of the Syndicated Exclusivity Surcharge

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; final determination.

SUMMARY: The Copyright Royalty Tribunal is amending its rules concerning the syndicated exclusivity surcharge which some cable systems have paid since 1983. This action is being taken in response to the regulations adopted by the Federal Communications Commission reinstating its former syndicated exclusivity blackout rules. The Tribunal has determined to eliminate the surcharge except when a distant commercial VHF station places its Grade B contour over the cable system. In those cases, cable systems shall pay the surcharge at the same level as before.

EFFECTIVE DATE: August 16, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION:

Authority

Section 801(b)(2)(C) of the Copyright Act states:

> In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

This Proceeding

When the Copyright Act was passed in 1976, a royalty payment was established to be paid by cable systems for the retransmission of broadcast signals to their subscribers. At that time, FCC rules gave broadcasters who obtained the exclusive right to air a syndicated program in their market the right to require any cable system in their market to blackout that same program if the system was importing it on a distant signal. Congress, aware of these blackout rules, authorized the Tribunal to adjust the basic rates whenever the FCC modified those rules.

In July 1980, the Federal Communications Commission (FCC) repealed its program syndicated exclusivity blackout rules. *Report and Order, Docket Nos. 20988 and 21284*, 79 F.C.C. 2d 663 (1980), *aff'd sub. nom. Malrite T.V. of New York, Inc.* v. *F.C.C.*, 652 F.2d 1140 (2d Cir. 1981).

Accordingly, the Tribunal established a syndicated exclusivity surcharge which is paid by Form 3[1] cable systems located wholly or in part in the top 100 television markets. *Adjustment of the Royalty Rate for Cable Systems*, 47 FR 52146 (1982). The surcharge is paid in addition to the basic rates established in the Copyright Act.

On February 12, 1987, the FCC proposed to reinstate its former syndicated exclusivity blackout rules. *Notice of Inquiry and Notice of Proposed Rulemaking, Gen. Docket No. 87-24*, 2 FCC Rcd 2393 (1987). On May 18, 1988, the FCC adopted a new set of syndicated exclusivity blackout rules, which were different in certain respects from the former syndicated exclusivity blackout rules. *Report and Order, Gen. Docket No. 87-24*, 3 FCC Rcd 5299 (1988), *recon. granted in part*, 4 FCC Rcd 2711 (1989), *aff'd sub. nom. United Video, Inc.* v. *FCC*, 890 F.2d 1173 (D.C. Cir. 1989).

The date on which broadcast stations could begin to demand blackout was set originally by the FCC as August 18, 1989, but, upon reconsideration, it was postponed to January 1, 1990. *Id.*

The sole task for the Tribunal in this proceeding is to determine whether the syndicated exclusivity surcharge is "reasonable in light of the changes" in the FCC syndicated exclusivity blackout rules. Reserved for a later proceeding is whether the basic statutory rates and the 3.75% rates "are reasonable in light of the changes" in the FCC syndicated exclusivity blackout rules.

Background and Chronology

On May 26, 1989, the Community Antenna Television Association (CATA) filed a petition with the Tribunal to eliminate the syndicated exclusivity surcharge in light of the FCC's action to reinstate the syndicated exclusivity blackout rules. On June 15, 1989, the NCTA filed a similar petition. However, in addition to requesting the elimination of the surcharge, NCTA also requested that there be a downward adjustment of the basic and 3.75% rates paid by Form 3 cable systems for reasons also stemming from the FCC's action.

On September 15, 1989, the Tribunal determined that an immediate consideration of the petitions was not warranted, and requested that the petitions be refiled after January 1, 1990. 54 FR 38266.

On January 2, 1990, CATA and NCTA refiled their petitions. On January 10, 1990, the Tribunal published a notice of commencement of proceedings. 55 FR 893. In the notice, the Tribunal announced that it would only consider the requests by CATA and NCTA to eliminate the surcharge. The Tribunal reserved for a separately docketed proceeding the request by NCTA that the basic and 3.75% rates also be reduced. The Tribunal requested comments whether the proceeding should be decided by written pleadings or whether there were any material questions of facts that would necessitate an oral hearing. *Id.* at 894.

Based on the comments filed by the parties, the Tribunal determined that the new syndicated exclusivity blackout rules were different than the former blackout rules, and that an oral hearing to evaluate whether the new rules are narrower or broader than the former rules was needed.

The Tribunal designated the following issues to be addressed at an oral hearing:

(1) A cable operator's right to substitute for blacked-out programming on both network-affiliated and independent stations, rather than just on independent stations;

(2) The inability of broadcast stations to demand blackout if the program being imported is on a distant signal which places a Grade B contour over any part of the cable system's community;

(3) The new right given to television stations to acquire national exclusive right to nonnetwork programs;

(4) The change, if any, in the rights of program suppliers to demand blackout;

(5) Whether contracts negotiated prior to the adoption of the new rules preclude the right to exercise blackout demands;

(6) Whether those parts of the new blackout rules which extend broader rights to demand blackout are equal to or greater than the narrower parts, thereby justifying the elimination of the syndicated exclusivity surcharge. *Order*, dated February 14, 1990.

On March 20, 1990, the Tribunal established that the effective date of any adjustment to the syndicated exclusivity

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[1] At the time of the establishment of the syndicated exclusivity surcharge, Form 3 systems were those cable systems grossing more than $214,000 per half year. Currently, Form 3 systems are those cable systems grossing more than $292,000 per half year.

Of the 12,936 cable systems which filed in the first semiannual accounting period in 1989, 1,993 were Form 3 systems. Of those, 1,110 were in the top 100 markets. Accordingly, 1,110 cable systems paid the syndicated exclusivity surcharge in 1989.

surcharge would be the first semiannual accounting period of 1990. 55 FR 10280.

On April 23, 1990, the parties filed their written direct cases. The Music Claimants (Music) entered testimony on an additional issue: Whether the potential for forbearance payments or arrangements between cable systems and broadcasters warranted the retention of a portion of the syndicated exclusivity surcharge. On May 8, 9, and 17, 1990, the Tribunal held hearings of the written direct cases.

On May 31, 1990, the parties filed their written rebuttal cases, as well as briefs in response to written questions propounded by the Tribunal at the direct case hearings.

On June 13, 1990, the Tribunal held hearings of the rebuttal cases. The record in the proceeding was closed at the conclusion of the rebuttal case hearing.

On June 29, 1990, the parties filed Proposed Findings of Fact and Conclusions of Law, including Proposed Rates. On July 9, 1990, the parties filed Reply Proposed Findings of Fact and Conclusions of Law.

The Parties

A consolidated case representing the cable interest was filed by the Joint Cable Parties (Cable) which included: the NCTA, CATA, Turner Broadcast Systems, Inc. (Turner), Buford Television, Inc. *et. al.* (a group of cable entities represented by Cole, Raywid & Braverman) and Media Cable Company, *et. al.* (a group of cable entities represented by Cohn & Marks). CATA and Turner also filed separate arguments at various times during the proceeding.

Program Suppliers, representing approximately 100 producers and/or syndicators, filed a case on behalf of the television program copyright owners. The Music Claimants, representing the three performing rights societies, ASCAP, BMI and SESAC, filed a case on behalf of the music copyright owners.

The National Association of Broadcasters (NAB), and the Joint Sports Claimants (Sports) representing Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association, did not present cases, but filed separate arguments.

Filing appearances in the proceeding, but not presenting cases or argument, were the Canadian Claimants, Multimedia Entertainment, Inc., National Public Radio, the Public Broadcasting Service, and the Settled Devotional Claimants.

Findings of Fact

Issue 1: A cable operator's right to substitute for blacked-out programming on both network-affiliated and independent stations, rather than just on independent stations.

Under the former FCC blackout rules, if a cable system was required to black out a program on an imported independent television station, it could substitute a program from any other television station and it could carry the substituted program to its completion. 47 CFR 76.61(b)(2) (1980).

Under the new FCC blackout rules, the class of stations for which cable systems could substitute other broadcast programs was expanded to all stations, independent and network-affiliated. 47 CFR 76.161 (1989). Non-broadcast programming could be substituted on either type of station under both the former and the new rules. Tr. 69–70.

This increased right of substitution for cable systems was quantified by Cable. Of the 2,944 instances of non-3.75% distant signal carriage on Form 3 cable systems on the top 100 markets during the first semiannual period of 1989, 355 instances represented carriage of network affiliates, 12.1% of the total. Klein Ex. 5. Cable asserted that 12.1% overstates the actual impact of the rule change because the amount of syndicated programming on network affiliates is typically far less than on independent stations. Tr. 72–74.

Position of the parties. The Program Suppliers did not cite this increased right of substitution as a basis for retention of some portion of the syndicated exclusivity surcharge. Prog. Supp. Prop. Findings.

Cable asserted that the increased right of substitution is *de minimis*, citing the small percentage of imported syndicated programming on network-affiliated stations. Cable Prop. Findings, p. 20. Moreover, Cable argued that as a matter of law, changes in the cable operator's substitution rights cannot provide a basis for adjusting the cable copyright rates. The Copyright Act states that "no value" can be assigned for programs substituted by cable systems for programs that the systems were required to black out. *Id.*, p. 33; 17 U.S.C. 111(f).

Sports asked the Tribunal not to consider the substitution issue in this proceeding, but to consider the issue in the next proceeding when the basic and 3.75% rates are considered. Sports argued that section 111(f) is no bar to a rate adjustment based on increased substitution rights. Rather, it is only a bar to counting the substituted program as an additional distant signal equivalent. Sports Reply Prop. Findings, pp. 9–10.

Issue 2: The inability of broadcast stations to demand blackout if the program being imported is on a distant signal which places a Grade B contour over any part of the cable system's community.

Under the FCC rules which were in effect as of April 15, 1976, broadcast stations in the top 100 markets could require a local cable system to blackout a program if that program was being imported on a commercial station located more than 35 miles from the cable system, unless the imported station was "significantly viewed," as defined by FCC rules. Tr. 272.

In 1977, the FCC modified this rule. The FCC determined that in the case of an imported commercial UHF station, local broadcast stations in the top 100 markets could only demand blackout if the cable system importing the commercial UHF station was beyond the Grade B contour of the commercial UHF station, and the signal was not "significantly viewed." No change was made in regard to commercial VHF stations. *Report and Order, Docket 20496*, 65 FCC 2d 218 (1977), *recon. denied*, 68 FCC 2d 1295 (1978).

No party petitioned the Tribunal to consider the effect of this rule change on the cable copyright rates within the 12 month period established in the Copyright Act. 17 U.S.C. 804(b).

Under the new FCC blackout rules established in 1989, local broadcast stations in the top 100 markets could only demand blackout if the cable system importing any commercial station, VHF or UHF, was beyond the Grade B contour of the commercial station, and the station was not "significantly viewed." 47 CFR 76.156 (1989).

The Grade B contours of VHF and UHF stations are larger than the 35-mile zone in virtually every case. Prog. Supp. Ex. 3; Tr. 485. Consequently, there will be some instances when a local broadcast station could demand blackout under the former rules that it cannot under the new rules.

Cable attempted to show the number of these instances. Cable identified 140 instances occurring in the first half of 1989 where a commercial VHF station for which a syndicated exclusivity surcharge was being paid was more than 35 miles from the cable system yet placed a Grade B contour over that cable system and was not "significantly viewed." Klein Ex. 6. In contrast to Cable's showing of how many actual instances occurred in 1989, Program

Suppliers introduced evidence to show the potential impact of the Grade B contour exemption. Program Suppliers selected ten stations licensed to the top 50 television markets, and nine stations licensed to the second 50 television markets, and for the total of those stations determined that there were 238 counties which fell outside the 35-mile zone but within the Grade B contour of these stations. Kessler Ex. 3. Of the 238 such identified counties, Cable objected to 67 of them because the Program Suppliers studied UHF stations. Cable objected to another 116 counties because the VHF stations were "significantly viewed" in those counties. Reb. Test. of Gregory Klein, pp. 2–4; Klein Reb. Exs. 1, 2.

Position of the parties. Program Suppliers, characterizing the Grade B exemption as a 25% increase in the area exempted by the new FCC rules, argued that this narrowing of the blackout rights is substantial, and contributes significantly to their request to retain 75% of the current syndex rate the first year, and 50% of the current syndex rate in future years. Prog. Supp. Prop. Findings, pp. 39–40. Program Suppliers argued that the Tribunal must consider both commercial VHF and UHF stations, relating back to the FCC syndex rules as they were in effect on April 15, 1976. *Id., pp. 4–6.*

Cable characterized the Grade B exemption as "extremely limited," quantifying the 140 instances it found as 5.7% of the total instances of non-3.75% distant signal carriage in the top 50 markets, and 2.4% of the total instances of non-3.75% distant signal carriage in the second 50 markets. Cable Prop. Findings, p. 23; Klein Ex. 6. Cable argued that the Tribunal must consider only commercial VHF stations as coming within this exemption, relating back to the FCC syndex rules as they were in effect on June 24, 1981 when the syndex rules were eliminated. Cable Reply Prop. Findings, pp. 9–11.

Sports argued that regardless how limited or broad the Grade B exemption may be, the Tribunal must continue the syndicated exclusivity surcharge for such situations because the Copyright Act states that syndex rate adjustments shall only apply to the television stations and cable systems affected by the change. Sports Reply Prop. Findings, pp. 2–5.

Issue 3: The new right given to television stations to acquire national exclusive rights to nonnetwork programs.

Under FCC rules in effect from 1973 to 1989, a broadcast station could obtain syndicated exclusivity only for its local area, defined as a 35-mile circle around the reference point of the station's licensed community (except in the case of hyphenated markets where a station licensed to one designated community could obtain exclusivity against a station licensed to another designated community). 47 CFR 73.658(m) (1973).

The stated purpose of the rule was to ensure that broadcast stations located in fringe or "overshadowed" markets have access to a large pool of nonnetwork programming. *First Report and Order, Docket No. 18179,* 42 FCC 2d 175 (1973).

At the same time that the FCC reinstated the syndicated exclusivity blackout rules, it modified this territorial rule to allow a broadcast station to obtain exclusive national rights such that no other U.S. station can broadcast the program. 47 CFR 73.658(m)(2) (1989).

One of the stated purposes of this modification was "to the extent that superstations obtain national exclusivity for their program schedules, or portions thereof, this change will contribute to the avoidance of blackouts and program replacements." *Report and Order, Gen. Docket No. 87–24,* FCC 88–180 (1988).

The new syndicated exclusivity rules refer to the modified broadcast territorial rules to describe the zone in which blackout demands can be made. 47 CFR 76.151(a) (NOTE).

Position of the parties. Program Suppliers presented economist Stanley Besen to establish the following: When a superstation acquires exclusive national rights to air a program, no local station can acquire any rights to it. Consequently, no blackout demand by the local station can be made and that program is "blackout proof" nationwide. To the extent a superstation can acquire exclusive national rights for all its programs, it can become a "blackout proof station." Test. of Stanley Besen, pp. 2–4.

Cable systems benefit when stations are "blackout proof," yet, unless required to under the compulsory license, they pay nothing for such benefit. This is unlike analogous markets where the benefit to a secondary user is taken into account in the purchase price. For example, when a broadcast network bids for the rights to a program, it takes into account both the direct value of the program to the network and the value of the program to its affiliates, in terms of network advertising revenues, and in terms of cost and revenue shares agreed to by the network affiliate by contract. *Id.*, p. 5. Another example, ESPN's bid for sports programs includes calculation of its national advertising plus fees ESPN receives from its cable system affiliates. *Id.*

At the close of the direct testimony, the Tribunal asked all parties to comment how the proposed compensation for the importation of blackout proof stations due to the acquiring of exclusive national rights would work. First, the Tribunal was concerned that there were many reasons why a program might be blackout proof unrelated to exclusive national rights, such as devotional programming which is sold on a nonexclusive basis; some locally produced programming which, because of only local appeal, are not syndicated; and programming for which blackout demands have been made, but substituted programming has been arranged. If a station has become 100% blackout proof, how should the Tribunal assess how much of that was due to the acquisition of exclusive national rights? Second, the Tribunal wanted to know whether the Program Suppliers wanted compensation for partially black out proof stations or 100% blackout proof stations, or where the Program Suppliers suggesting several rates depending on the degree to which the station was blackout proof. Third, the Tribunal wanted to know how the cable system and the administering agencies, the Tribunal and the Copyright Office, would know that a station had cleared exclusive national rights. Tribunal Ex. 1.

In response to the Tribunal's questions, Program Suppliers recommended that for those broadcast stations which acquire exclusive national rights, the number of syndicated non-devotional programming could be ascertained by reference to the special Nielsen study sponsored by MPAA for Tribunal distribution proceedings. Reb. Test. of Besen, pp. 6–7; Prog. Supp. Ex. R–9. The Tribunal would take an average of three years of Nielsen data prior to the year in question. Prog. Supp. Prop. Findings, p. 47.

The next step would be for each cable system to calculate and report to the Copyright Office the number of programs on these stations to which the cable system received an actual blackout demand and/or received or arranged substituted programs.

The number of blackout/substitutions would be compared with the overall syndicated non-devotional programs on these stations and if the percentage of blackout/substitutions were below the Tribunal's threshold, the system would be considered receiving a benefit from "blackout-proofing" and some compensation from the cable system would be owed. If the percentage was above the Tribunal's threshold, no

compensation would be owed. Prog. Supp. Prop. Findings, p. 47–49.

Program Suppliers recommended that the threshold for compensation be set at 35%. That is, if the percentage of blackouts/substitutions were less than 35% of the total of syndicated non-devotional programming on that station, the cable system would owe some compensation. *Id.* Program Suppliers asserted that the 35% threshold falls between normal levels of blackout for WTBS and WWOR and those for WGN and WPIX. *Id*; Reb. Test. of Besen, pp. 7–8. Program Suppliers also asserted that the "threshold" concept avoids the problems of evasion, whereby a broadcast station acquiring exclusive national rights would neglect to do so in a few instances to avoid being 100% blackout proof. Program Suppliers believed that a cable system receiving fewer than 35% blackout/substitutions still has received a benefit for which it should pay. *Id.*, pp. 48–49.

Witness Besen for the Program Suppliers conceded there were many reasons, unrelated to the acquiring of exclusive national rights, why a cable system might not receive a blackout demand, such as: the program was sold market by market on a nonexclusive basis, the program that appears on the imported station was not sold in the local market, or the local station had acquired local exclusivity but neglected or chose not to demand blackout. Tr. 628–629.

Program Suppliers argued that the Tribunal should consider their overall plan despite the inability to link perfectly the surcharge payments directly to the reason an individual program is blackout proof. Program Suppliers asserted that the Tribunal has the authority to balance overall policy against individual inequities, that perfect linkage would create a morass in administration. Prog. Supp. Reply Prop. Findings, p. 17.

Cable and Turner argued that there were two legal grounds why the Tribunal may not consider adjusting the syndicated exclusivity surcharge due to the new right of broadcasters to obtain exclusive national rights. First, Cable and Turner asserted that the FCC rule change was a change in the broadcast territorial rights, part 73 of the FCC rules, not a change in the cable syndicated exclusivity blackout rules, part 76 of the FCC rules, and the Tribunal may make rate adjustments only due to changes in the syndicated exclusivity blackout rules. Cable Prop. Findings, p. 34; Turner Prop. Findings, par. 5.

Second, Cable and Turner asserted that the former rules did not prohibit a station from obtaining nonexclusive national rights. A "nonexclusive national right" gives to a broadcaster the right to air the program nationwide and a promise that the program supplier will not sell local exclusivity to any other broadcaster; an "exclusive national right" gives to a broadcaster a right to air the program nationwide and a promise that the program supplier will not sell the program at all to any other broadcaster. The result, in either case, is that blackout demands cannot be made by a local broadcaster. Hence, Cable and Turner argue that the addition of exclusive national rights has no effect on blackout demands. Tr. 80–81, 224, 310.

Witness Davidson for Cable conceded he was unaware whether or not nonexclusive national rights were bargained for prior to the elimination of the syndex blackout rules. Tr. 228. The FCC stated in its Report and Order reinstating the new syndex blackout rules that the option of nonexclusive national rights "is not and has not been available in the case of that small number of existing contracts that were signed" prior to the elimination of the blackout rules. *Report and Order, Gen. Docket No. 87–24*, p. 70–71, n. 198 (1988).

On the merits of Program Suppliers' proposal, Cable argued that when the FCC added the option of exclusive national rights, it added to the ability of syndicators to market its programs by giving the syndicator the choice of selling market by market or nationally, whichever would give the syndicator the greater profit. Witness Davidson stated that "since the station who negotiates national exclusive rights will have paid for such national exclusivity, there is absolutely no reason for cable operators to further compensate program suppliers. . . . The degree to which broadcast stations can now obtain national exclusive rights . . . has nothing whatsoever to do with cable television operators." Test. of Seth Davidson, p. 37.

Cable also asserted program suppliers will get higher prices for their programs from superstations, because superstations recoup on the basis of inserted national advertising. Tr. 314–315. Finally, Cable argued that Program Suppliers' proposal is unworkable and inequitable because there are many reasons why a cable system might not receive blackout demands unrelated to exclusive national rights. Cable Prop. Findings, pp. 41–42.

NAB believed that the Program Suppliers' proposed surcharge is justified for the following reasons: When Congress first set the basic rates, it was on the basis of imported distant signals which had a certain number of "holes" in the broadcast day due to blackout demands. After the blackout rules were eliminated, the Tribunal established a surcharge to represent paying for a complete distant signal, without "holes." Now that FCC syndex rules are in place, if cable systems are importing "blackout proof" stations, they will be getting complete signals, and they should pay for that benefit, so some level of continued surcharge payment is warranted. Comments of NAB.

Music supported the Program Suppliers' proposed surcharge. Recognizing that "the problems in making very fine distinctions are virtually insuperable," Music recommended that the Tribunal arrive at a "reasonable average surcharge," citing that such averaging was a common and necessary practice in public performance licensing in the music industry. Brief of Music.

Issue 4: The change, if any, in the rights of program suppliers to demand blackout.

Program Suppliers characterized the differences in the rights of program suppliers to demand blackout from the former rules to the new rules as "slight," and more in the nature of "stylistic changes," and did not request any retention of the surcharge based on this issue. Prog. Supp. Memorandum of Law, pp. 14–15.

Issue 5: Whether contracts negotiated prior to the adoption of the new rules preclude the right to exercise blackout demands.

Under the new FCC rules, for a broadcast station to be eligible to invoke its right to blackout an imported program, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. 47 CFR 76.159 (1989).

Contracts entered into prior to the FCC's action reinstating blackout must contain clear and specific reference to the station's authority to exercise exclusivity rights. In the absence of such a specific reference, the contract can be amended to include the specific language, or a special written acknowledgement can be obtained from the program supplier stating that the existing contract was intended or should now be construed to include such rights. *Id.*

Under the old FCC syndex rules, all contracts in existence at the time those rules became effective, March 31, 1972, were automatically presumed to convey syndicated exclusivity. No amendment or acknowledgement was required. 47 CFR 76.153(c) (1972).

Program Suppliers attempted to quantify the number and percentages of contracts negotiated before August 18, 1988, the date of the FCC's reinstatement of the syndex rules, which are still in effect. Of the approximately 100 producers and/or syndicators represented by Program Suppliers, Witness Marsha Kessler called twelve and asked each company what percentage of their contracts were written prior to August 18, 1988, how long they run, how many were re-negotiated to add exclusivity, and when they expire. Test. of Marsha Kessler, pp. 1–2.

Eight of the twelve companies responded. Fox, Worldvision, MCA, and Paramount could not determine what percentage of contracts were written pre-syndex. Republic said 2,500 of some 3,700 to 3,900 contracts or about 65%; Samuel Goldwyn said 95%; Claster said 72%; LBS said, vast majority. Kessler Ex. 1.

Republic, Samuel Goldwyn, Fox, Worldvision, Claster, and Paramount said none of their pre-syndex contracts had been renegotiated, MCA said a minimal number had been renegotiated, LBS said about 20% of old contracts were amended to grant exclusivity. *Id.* Cable impeached Kessler's testimony that Paramount and Samuel Goldwyn had not amended their contracts. Cable Ex. 1X; Tr. 508–510, 516–518. Kessler did not ask any program supplier whether acknowledgements of exclusivity, rather than amendments to contracts, were provided by the program supplier. Tr. 502–503.

The duration of syndication contracts ranged from one year for LBS, for some of Claster's programs, for first run syndication of Fox's shows, and for barter arrangements entered into by Republic and Worldvision, to 4 to 6 years for MCA, 3–5 years for Fox movies, 5 years for Samuel Goldwyn programs and 5 to 10 years for Worldvision cash contracts. Kessler Ex. 1.

Concerning the expiration of pre-August 1988 contracts, Fox and MCA were unable to provide data. Paramount said 1078 of its 1901 contracts would expire in 1990, 217 would expire in 1991, the balance later. LBS said most would expire September 1990. Claster said most would expire September 1991. Republic's largest group of contracts will expire in 1991 with a smaller group to expire in 1994. Worldvision said most barter contracts would expire before September 1990; otherwise it could not provide data on cash contracts. Samuel Goldwyn's contracts are scheduled to expire on a steady basis through 1995. Kessler Ex. 1.

Position of the parties. Program Suppliers argued that the continued existence of contracts negotiated before the effective date of the FCC rule changes merits a retention of 25% of the syndicated exclusivity surcharge for 1990.

Cable argued that FCC rules give program suppliers and broadcasters the means to amend prior contracts to include exclusivity, so that the continued existence of pre-syndex contracts do not warrant any retention of the surcharge. Cable argued further that the new FCC rules are more favorable to program suppliers than the former FCC rules. Former FCC rules presumed exclusivity; the new rules do not. Therefore, Cable argued that this gave an opportunity to program suppliers to obtain consideration for giving the broadcaster exclusivity. Cable Prop. Findings, pp. 28–29, 34–36.

Issue 6: Whether those parts of the new blackout rules which extend broader rights to demand blackout are equal to or greater than the narrower parts, thereby justifying the elimination of the syndicated exclusivity surcharge.

Cable presented eight areas in which the FCC's new blackout rules provide greater exclusivity rights to program suppliers and broadcast stations than did the FCC's former blackout rules. Test. of Seth Davidson, pp. 8–29.

(1) Under the former FCC rules, broadcast stations could demand blackout only of cable systems located wholly or in part in the top 100 television markets. 47 CFR 76.151 (1980).

Under the new FCC rules, broadcast station can demand blackout of cable systems located wholly or in part in any television market. 47 CFR 76.151 (1989).

(2) Under the former FCC rules, program suppliers could require all cable systems located wholly or in part in the top 50 television markets to blackout any syndicated program for a period of one year from the date that program was first licensed or sold as a syndicated program for television broadcast exhibition anywhere in the United States. 47 CFR 76.151(a) (1980).

Under the new FCC rules, program suppliers can demand the same one-year "pre-clearance" right from first sale of cable systems located wholly or in part in any television market. 47 CFR 76.153(b) (1989).

(3) Under the former FCC rules, only television stations licensed to designated communities in the top 100 television markets could make blackout demand of cable systems. 47 CFR 76.153(b) (1980).

Under the new FCC rules, any licensed television station can make blackout demands of cable systems. 47 CFR 76.151 (1989).

(4) Under the former FCC rules, there were two types of time limits placed on blackout demands. First, television broadcast stations in markets 51–100 could only request cable operators to blackout their prime time programming if the requesting station was going to be airing the program during prime time. Second, time limits were placed on the period the program itself could be protected in markets 51–100. These time periods could run from one day to two years depending on the type of program. 47 CFR 76.151(b) (1980).

Under the new FCC rules, there are no time limits. Television stations in all markets can demand blackout without regard to the time slot the program will be carried, or whether it will ever be exhibitied by the station. The program itself can receive exclusivity protection for the entire run of the licensing agreement, whether the broadcast station is the original purchaser or a subsequent purchaser. 47 CFR 76.153 (1989).

(5) Under the former FCC rules, all distant signals carried by a cable system as of March 31, 1972 were exempt from blackout demands. 47 CFR 76.159 (1980).

Under the new FCC rules, there are no "grandfathered" stations. All imported stations are subject to blackout demands. 47 CFR 76.156 (1989).

(6) Under the former FCC rules, only distant signals were subject to blackout demands. 47 CFR 76.151(b) (1980).

Under the new FCC rules, there is an instance where a local signal may be subject to blackout demands. In the case of a cable system located in a hyphenated market, if some of the broadcast stations licensed to that hyphenated market do not place a Grade B contour over the cable system and are not significantly viewed, then those cable systems may be required to blackout programs on the imported, but local, television station. 47 CFR 76.156 (1989); Test. of Seth Davidson, pp. 24–25.

(7) Under the former FCC rules, a cable system that served the designated community of a major television market, but which was partially overlapped by a second major television market did not have to honor blackout requests from any television station licensed to the second major television market. 47 CFR 76.153(c) (1980).

Under the new FCC rules, a cable system under the same circumstances would have to honor a blackout request from any television station licensed to the second major television market. 47 CFR 76.156 (1986); Test. of Seth Davidson, pp. 26–27.

(8) Under the former FCC rules, broadcasters invoking blackout protection had to provide a list to each local cable operator, by call sign, date, and time, of all the distant programming carried by the cable operator for which blackout protection was sought. 47 CFR 76.155 (1980).

Under the new FCC rules, the responsibility for determining which particular programs must be blacked out is upon the cable systems receiving the blackout demand. 47 CFR 76.155 (1989).

Position of the parties. Cable argued that the broader rights extended to program suppliers and broadcasters more than outweigh the areas in which the rules were narrowed, and that the surcharge should be eliminated in its entirety. Cable Prop. Findings, p. 41.

Program Supplies argued that many of the broader rights are either *de minimis*, or affect only smaller television markets or only local signals. Further, Program Suppliers assert that the narrower aspects of the new blackout rules have more impact than the broader aspects such that 50% of the surcharge for the top 50 television markets should be retained for cable systems in the top 100 television markets. Prog. Supp. Prop. Findings, pp. 15–34, 51.

Sports argued that the broader aspects of the rules may not be used to outweigh the narrower aspects because different systems are affected differently, and the Copyright Act authorizes the Tribunal to adjust the cable royalty rates only for affected television stations and cable systems. Sports Reply Prop. Findings, pp. 2–5.

Issue 7: Whether the potential for forbearance payments or arrangements between cable systems and broadcasters warrants the retention of a portion of the syndicated exclusivity surcharge.

At the time of the adoption of the new FCC blackout rules, the FCC stated,

> The cable operator and relevant broadcaster may find it in their mutual interest to work out an arrangement whereby the duplicative distant signal can be carried despite the local broadcaster's exclusivity right. If cable subscribers truly value the opportunity to view a particular syndicated program * * *, the cable operator has an incentive to pay the broadcaster for the right to duplicate its program and the broadcaster has an incentive to accept a payment rather than show the program exclusively as long as the payment more than makes up for any revenue declines as a result of diversion. *Report and Order, Gen. Docket No. 87–24*, par 78 (1988).

The NCTA has advised its members of the possibility of such forbearance arrangements. Tr. 248–252; Music Ex. 4X. The forbearance might be in the form of a cash payment not to invoke blackout, or a cash payment not to purchase exclusivity. Test. of Peter Boyle, p. 4. The forbearance might be in the form of non-cash consideration such as furnishing of advertising or promotional announcement time by the cable operator to the broadcast station, or an agreement to place the broadcast station's signal at a particular channel location on the cable system. Tr. 397–398; 242–244.

The FCC expected that program suppliers should be able to charge local broadcasters a fee that reflects both advertising revenue and payments from cable system for duplication rights. *Report and Order, Gen. Docket No. 87–24*, par. 59 (1988).

Some forbearance agreements are being precluded by program suppliers who include language in their contracts requiring the broadcast stations to invoke blackout protection. Shapiro Ex. 2.; Tr. 422–424.

Music presented no evidence that any forbearance arrangements have been made by cable operators and broadcasters. Test. of Peter Boyle. There is no public reporting requirement for forbearance payments. *Id.*, p. 8.

Forbearance arrangments were possible under the former FCC blackout rules. Test. of Seth Davidson, Ex. 1, pp. 28–29.

Position of the parties. Music argued that forbearance payments or arrangements are the equivalent of a sublicensing by broadcast stations of their music which, but for the existence of the compulsory license, could not occur without compensation flowing to the performing rights societies. Music Reply Findings, p. 5.

Music further argued that relief from ASCAP's rate court is not, as a practical matter, possible. ASCAP's current interim local television license fee is on a flat dollar basis, so set by the United States District Court for the Southern District of New York. Test. of Peter Boyle, p. 7. ASCAP's final local television license fee was proposed before the new blackout rules were reinstated and do not account for any forbearance payments. *Id.* BMI has voluntarily set its local television license fee as a percentage of ASCAP's fee and, therefore, BMI's final fee depends on what ASCAP gets from the rate court. Test. of David Black, pp. 4–5.

Music argued that, absent any hard evidence concerning the level of forbearance arrangements, a "reasonable speculation" would support a continuation of 10% of the existing syndex surcharge. Should the Tribunal decide that only Music should share in such a retention of the surcharge, then the continued surcharge should be 4.5% (the amount Music has received in distribution proceedings) of the recommended 10% surcharge, or 0.45%. Music Prop. Findings, par. 54–56.

Cable argued that a "forbearance" surcharge was not justified because forbearance was possible under both the former and new FCC rules, no evidence was introduced that any forbearance arrangements have been entered into, and any difficulties Music has in establishing a local license fee for television stations should be addressed to the rate court, not the Tribunal. Cable further argued that to the extent any cable system makes a payment to a broadcast station, then the cable system has paid for its benefit and should not have to pay again. Cable Prop. Findings, pp. 41–43.

NAB noted that no evidence of forbearance arrangements was introduced in the record, and therefore opposed a forbearance surcharge. Statement of NAB.

Conclusions of Law

The syndicated exclusivity surcharge is no longer "reasonable" in light of the changes in the FCC syndicated exclusivity rules and is eliminated, except for the "Grade B exemption" described by the copyright owners.

The syndicated exclusivity surcharge was instituted by the Tribunal in 1982 because of the action taken by the FCC to delete the syndicated exclusivity blackout rules in their entirety. Consequently, when the FCC reinstated its blackout rules in 1988, with blackouts to commence in 1990, CATA and NCTA petitioned the Tribunal to make a finding that the surcharge is no longer justified.

However, this proposed finding could not be readily made, because, as indicated by the parties' filings, the new FCC blackout rules are different than the former FCC blackout rules. So the Tribunal embarked on an analysis of these differences to ascertain whether program suppliers have fewer or greater rights to demand blackout. The Tribunal did so on the belief that if the program suppliers have fewer rights under the new FCC rules, some continuation of the surcharge would be warranted, but that if the program suppliers have the same or greater rights, then the surcharge should be eliminated.

Issues 1–5 and Issue 7 in this proceeding involved an analysis of areas in which the copyright owners asserted they would be adversely affected by the new FCC blackout rules. Issue 6 involved areas in which the cable interests asserted that the

copyright owners would be advantaged by the new rules.

On three of the issues, Issues 1, 4, and 5, the Tribunal found no grounds for concluding that the copyright owners were disadvantaged.

Issue 4, the change in the rights of the program suppliers to demand blackout, was mooted by the Program Suppliers' admission that the change had no real impact on their rights.

Concerning Issue 1, the expansion of the cable operator's substitution rights, Program Suppliers did not advance this as the basis of any retention of the surcharge. However, Sports asked the Tribunal to defer consideration of this issue to the next proceeding when the basic and 3.75% rates will be considered, while Cable asked the Tribunal to declare now that the substitution right cannot be the basis for any rate adjustment, according to language in section 111(f) of the Copyright Act. The Tribunal agrees with Sports. The issue of substitution rights was not a part of the Tribunal's decision in this proceeding, but may be brought up by the copyright owners in the next proceeding. The Tribunal will consider the impact of section 111(f) at that time.

Concerning Issue 5, pre-existing contracts, the Tribunal considers that contracts negotiated prior to the FCC's action of August 18, 1988 offer no impediment at all to the program suppliers' ability to obtain blackout protection. Program suppliers' awareness that exclusivity blackout rights might be restored began February 12, 1987 when the FCC first announced it was considering reinstating the rules. Since that time, they have had the ability to provide for exclusivity in their contracts. Even older contracts can be freely amended under the new FCC rules to provide blackout protection and, as Cable pointed out, the program supplier has the option of negotiating for additional compensation if the exclusivity has value to the broadcast station.

Consequently, the Tribunal's consideration came down to a weighing of the Grade B exemption (Issue 2), exclusive national rights (Issue 3) and forbearance (Issue 7), on the one hand, and Cable's assertions of greater rights for copyright owners (Issue 6), on the other hand.

Exclusive national rights. The legislative history of section 111 of the Copyright Act speaks of two reasons why cable systems are required to pay for broadcast retransmissions. One is the harm to copyright owners, "transmission of distant nonnetwork programming by cable systems causes damage to the copyright owner by distributing the program in an area beyond which it has been licensed. Such transmission adversely affects the ability of the copyright owner to exploit the work in the distant market." House Report, at 90. The second reason is the benefit to cable operators, "(Retransmissions are) also of direct benefit to the cable system by enhancing its ability to attract subscribers and increase revenues." *Id.* "(C)able systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs." *Id.*, at 89.

Consequently, harm to copyright owners and benefit to cable operators have been separate criteria upon which the Tribunal has consistently made distribution and ratesetting decisions. More specific to this proceeding, the Tribunal took evidence on both harm and benefit during the 1982 rate adjustment proceeding which first imposed the syndicated exclusivity surcharge. *Adjustment of the Royalty Rate for Cable Systems*, 47 FR 52146, 52155–52158 (1982).

Cable argued that the addition by the FCC of exclusive national rights gave the program suppliers one more option to their marketing strategies, one more method to prevent the harm of cable retransmissions. The Tribunal agrees with Cable. On the basis of harm, no retention of the surcharge for exclusive national rights is justified.

However, Cable is incorrect when it asserts that "the degree to which broadcast stations can now obtain national exclusive rights * * * has nothing whatsoever to do with cable television operators." Cable is another commercial market for copyrighted works for which copyright owners are entitled to charge regardless of the compensation paid by broadcast stations. By entering into agreements which may "blackout proof" certain stations, a benefit is being conferred on cable systems. Therefore, absent other considerations, a payment for such benefit may be due.

This is not a new concept, but, on the contrary, operates daily in the realm of music licensing. The performing rights societies regularly receive compensation from bars, restaurants and other establishments which publicly perform music on their radios without regard to the compensation the societies have received from radio stations.

Two types of benefits were discussed at hearing. There is the benefit to the broadcast station and the benefit to the cable system. Presumably, unless the broadcast station considers obtaining exclusive national rights to be a benefit, it will not negotiate for that right. Mr. Davidson for Cable testified that the kind of superstation that would benefit from obtaining exclusive national rights is a station that sells national advertising on its signal. Such a station would seek nationwide coverage and would gain in advertising revenues with each additional cable system which chose to import it.

Consequently, with exclusive national rights, a program supplier has another method to take care of his harm from retransmissions, and can negotiate a higher price with the broadcast station, taking into account the station's benefit from national advertising. What is missing in the equation, according to economist Stanley Besen, is the payment for the benefit to cable systems. As Dr. Besen pointed out, the benefit to secondary users is taken into account in other markets. Both television networks and cable networks, such as ESPN, are able to get consideration from their affiliates or customers (in addition to their own advertising revenues), and that enters into what the copyright owners are able to negotiate with the television and cable networks.

Having isolated the "benefit to cable systems" as the ground upon which some compensation may be warranted, the Tribunal turns now to legal and administrative considerations.

First, Cable argued that the change in the FCC rules which authorized exclusive national rights are found in the broadcast territorial rules, not in the cable syndicated exclusivity rules, and as such cannot be a basis for a cable rate adjustment, because the Copyright Act only authorizes adjustments in the event of changes in the FCC's syndicated exclusivity rules.

While it is true that the original reason for the territorial rules was to protect broadcast stations in fringe markets, the change which the FCC made in 1988 to allow for exclusive national rights was specifically made as part and parcel of the reinstatement of the syndicated exclusivity rules. It was designed to enhance the avoidance of blackouts and program substitutions, and was specifically incorporated by reference in § 76.151 of the new syndicated exclusivity rules. Clearly, it represents a change in the syndicated exclusivity rules. Cable's argument presents too narrow a view of Congressional intent, turning as it does on where the rule is placed in the FCC regulations, rather than on its purpose.

Second, Cable aruged that nonexclusive national rights were

available under the former rules, that both nonexclusive and exclusive national rights have the effect of avoiding blackouts, so that exclusive national rights is a change without an effect, as far as cable systems are concerned.

The Tribunal finds the prior existence of nonexclusive national rights problematic. Mr. Davidson was unaware of any contracts with such provisions. The legality of such provisions derived from a negative inference from the territorial rules. That is, they were not prohibited. However, the FCC's own statement made when the FCC reinstated the blackout rules evinced a belief that the option of nonexclusive national rights was not available prior to 1980. Further, the FCC specifically introduced exclusive national rights as a means to avoid blackouts. Had the FCC been aware of nonexclusive national rights as a means to avoid blackouts, there would have been no need to introduce exclusive national rights.

In any event, exclusive national rights is a separate right and does provide a benefit that nonexclusive national rights does not. It prohibits the program supplier from selling the program to any other broadcast station, while nonexclusive national rights only prohibits a program supplier from conveying exclusivity to a local broadcaster. Therefore, whether nonexclusive national rights existed or not, it does not pose any legal impediment to the Tribunal's recognition of exclusive national rights as a basis for some compensation to the copyright owners.

Turning to administrative considerations, the Tribunal was aware of the difficulty of isolating this benefit to cable, quantifying it, and devising a reasonable administrative mechanism for its payment. Therefore, the Tribunal asked the parties to comment on these problems. Specifically, the Tribunal had in mind the instructions set forth in section 801(b)(2)(C) of the Copyright Act which allows for rate adjustments only for changes in the FCC syndicated exclusivity rules and only for those affected television broadcast signals and cable systems.

First, it is noted that Program Suppliers introduced no evidence to quantify the benefit to cable. The record is devoid of any measure of the stations which are obtaining exclusive national rights, how many programs are being sold with these rights, and how to measure the inability of the program suppliers to recoup the benefit to cable. The first difficulty the Tribunal faced, then, was that any rate it could establish for the copyright owners would be without any record justification.

Second, the Program Suppliers' response to the Tribunal's questions was that each cable system should compare the number of blackout demands it receives plus the number of substituted programs it receives with the overall level of non-devotional syndicated programming each signal has, as derived from Program Suppliers' special Nielsen study. If the blackouts/substitutions are below a certain percentage, Program Suppliers urged the Tribunal to find that such cable systems were receiving an essentially "blackout proof" station and should pay for the benefit.

This proposal had many features that were an improvement over the Program Suppliers' original request for a general surcharge. It attempted to isolate the reason for the surcharge, exclusive national rights, and it attempted to isolate only those cable systems receiving the benefit. However, the proposal still cast far too wide a net. There are many reasons why a station would be essentially blackout proof having nothing to do with exclusive national rights. A program may, for a number of reasons, be marketed on a nonexclusive basis, or the program may not have been sold in the local market at all, or the local station may have acquired exclusivity but neglected or chose not to demand blackout. With all these exceptions, it could even be the case that a cable system was importing a blackout proof station on which the station had not obtained even a single program on a national exclusivity basis.

In fact, this seems the much more likely scenario, considering Mr. Davidson's testimony that only a superstation selling national advertising would have the incentive to obtain exclusive national rights.

Both Program Suppliers and Music recognized the administrative morass involved in perfectly isolating the affected FCC rule change and the affected television signals and cable systems, and urged the Tribunal to apply a reasonable average.

The Tribunal agrees that in the search for administrative ease and the effort to comply with section 801(b)(2)(C) that there could be instances where the legitimate compensation of copyright owners might be unfairly reduced, and might consider in other circumstances applying a reasonable average.[1]

However, it is stressed that on this issue Program Suppliers failed to carry their burden. They provided no means at all for the Tribunal to measure their loss, and they proposed a procedure which would have compensated copyright owners time and again for reasons unrelated to the FCC rule change, and only rarely for exclusive national rights.

The Tribunal will not retain any portion of the syndicated exclusivity surcharge for exclusive national rights, but would, if requested, revisit this issue in the next proceeding on the effect of the FCC rule changes on the basic and 3.75% rates to see whether the described difficulties in ascertaining the impact of exclusive national rights are true for those rates as well, or can be resolved.

Forbearance. As in the case of exclusive national rights, Music has argued that forbearance agreements or arrangements between cable systems and broadcast stations not to assert blackout protection constitute a benefit to cable systems for which Music deserves compensation.

Once again, there are two benefits which need discussion. First, there is the benefit to the broadcast station. Presumably, the broadcast station would not forbear unless the payment or arrangement it makes with the cable system provides greater advantage to the station than the potential loss in audience and advertising due to the nonexclusive showing of the station's program. Second, there is a benefit to the cable system of having a blackout proof signal.

For the benefit to the broadcast station, Music has claimed that it is impractical for ASCAP to go to the rate court because its compensation proposal is now on a flat rate basis and it's doubtful that the proposal, which was made before the reinstatement of the blackout rules, can be amended. Further, it was asserted the BMI's compensation from broadcasters is based on a percentage of ASCAP's percentage, so that both performing rights societies are dependent on the rate court's decision.

However, when it comes to the benefit to the broadcast station, Music has not shown how the Tribunal can assert jurisdiction. These payments represent a substitute for the broadcast station's lost potential advertising revenues for its primary transmission, and it appears to be a matter for the rate court or industry negotiation, not the Tribunal, regardless of the practical difficulties.

Concerning the benefit to cable systems, Music claims that if a forbearance payment is made, this amounts to the broadcaster acting as a sublicensor of Music's works, which in

[1] This concern is somewhat tempered in this case by the showing that copyright owners have the option to protect the harm portion of the equation.

the free marketplace would not occur. Music licenses the public performances of its works separately. While program suppliers can, presumably, take into account when negotiating with the broadcast station whatever forbearance payments may occur, Music cannot.

The Tribunal does not rule on whether the benefit to cable systems may be compensated by the Tribunal, because Music's case founders on the lack of evidence in the record. There is no evidence that a single forbearance payment or arrangement has occurred, or whether such arrangements will be undertaken by many or few cable systems. Such agreements are not publicly reported. As Music itself characterized the situation at hearing, if forbearance does occur, it is a sort of "underground economy." Music provided no means to quantify the effect of forebearance, or ways to apply it to the affected cable systems. Music, instead, proposed an average rate for all top 100 markets cable systems of 0.45% of the existing surcharge, asserting that such a rate was a reasonable estimate, and that averaging for all users was a standard practice in the music industry.

The Tribunal once again finds itself divided between the instructions of section 801(b)(2)(C) and the potential that a legitimate claim by a copyright owner might not be compensated, and would not absolutely rule out using the tool of an average rate if circumstances were different. However, it is emphasized again that the Tribunal had no record whatever in this proceeding to find whether forbearance agreements or arrangements do occur, whether these arrangements are the rule or are rare, how to quantify the benefit to cable systems, what would be a reasonable rate, or to which cable systems to apply the rate.

Music suggested that some evidence might have been available if the Tribunal had conducted this proceeding at a later time, but it seems likely that cable systems would have delayed entering into forbearance arrangements until after the Tribunal's decision.

The Tribunal finds it more appropriate to revisit the forbearance issue in 1995 after future rate court decisions, and when industry practices become established and evidence can be produced.

Concerning Cable's argument that forbearance practices were available under the former FCC rules, so that forbearance practices under the new rules provide no new basis for compensation, the Tribunal will defer that issue to the 1995 proceeding should be agency be requested to take up the forebearance issue.

Grade B exemption. Under the FCC rules which were in effect as of June 24, 1981, broadcast stations in the top 100 markets could require a local cable system importing a commercial VHF station to blackout a program on that station if the commercial VHF station was located more than 35 miles from the cable system, and was not "significantly viewed," as defined by FCC rules.

Under the new FCC rules, broadcast stations in the top 100 markets could require a local cable system importing a commercial VHF station to blackout a program on that station only if the cable system was located beyond the Grade B contour of the commercial VHF station, and the station was not "significantly viewed."

As a result, imported commercial VHF stations which are more than 35 miles from a cable system but which place a predicted Grade B contour over the cable system are not subject to blackout demands.

Because broadcast stations cannot demand blackout of programs on these types of imported stations, the need for a continued syndicated exclusivity surcharge was shown by the copyright owners.

Cable argued that despite this particular narrowing of the rules, the ways in which the rights of the copyright owners were expanded, as Cable demonstrated under Issue 6, more than compensated for this narrowing, and therefore the Tribunal should eliminate the surcharge in its entirety.

However, it was shown that regardless of how the rights of the program supplier may have been otherwise enlarged, when it comes to the Grade B exemption, it was as if the FCC had not reimposed the blackout rules at all. These types of imported signals are not subject to any blackout demands whatever. Hence, full compensation is owed the copyright owners.

Much debate centered around the actual versus the potential impact of the Grade B exemption. Cable showed what would have been the actual impact in 1989 in terms of 140 identified instances, while Program Suppliers concentrated on the potential of a greatly enlarged area of protection from blackout demands.

The Tribunal has chosen simply to continue the syndicated exclusivity surcharge in the case of the Grade B exemption at the same level as before. In that way, no prediction of the future impact is necessary. To the degree that any instances occur in the future that fall under the Grade B exemption, the surcharge will be paid for in each instance, and the surcharge payment level will rise or fall according to the level of the actual future occurrences.

Program Suppliers argued that the point of reference for the Tribunal's decision is not the syndicated exclusivity rules as they were as of June 24, 1981, but the rules as they were as of April 15, 1976. Under the 1976 rules, broadcast stations could demand blackout of programs on UHF stations which were more than 35 miles from the cable system, as well as VHF stations. In 1977, the FCC changed this to allow for blackout of a UHF station only if the cable system was beyond the predicted Grade B contour of the UHF station.

If the Tribunal were to agree with Program Suppliers, then the conclusion would be that the surcharge should continue for both commercial VHF and UHF stations that came under the Grade B exemption.

However, the Tribunal considers that the point of reference for this decision is the rules that were in effect on June 24, 1981. Section 804(b) of the Copyright Act requires affected copyright owners or users to petition the Tribunal for a rate adjustment within 12 months of a change in the FCC syndicated exclusivity rules. No party petitioned the Tribunal within 12 months when the FCC modified its rules concerning UHF stations. Hence, the limitation of section 804(b) applies and the Tribunal may not consider that rule change now.

Issue 6—broader or narrower rights. Cable examined eight areas in which the new rules are said to extend greater protection to the copyright owners than the former rules. Much testimony was received concerning whether these rule changes have great impact, or are *de minimis*. The Tribunal concludes, for this proceeding, only that the new rules are at least as broad as the former rules justifying an elimination of the surcharge, except for the Grade B exemption. The Tribunal reserves for the next proceeding concerning the basic and 3.75% rates whether the new rules are broader and whether the basic and 3.75% rates are reasonable in light of the changes in those rules. Consequently, no findings of fact were made in this proceeding on the quantifications offered by Cable and Program Suppliers on the effect of these rule changes. They will be re-heard in the next proceeding.

Tribunal Holding and Effective Date

The Tribunal holds that the syndicated exclusivity surcharge paid by Form 3 cable systems in the top 100 television markets is eliminated, except for those instances when a cable system is importing a distant commercial VHF

station which places a predicted Grade B contour, as defined by FCC rules, over the cable system, and the station is not "significantly viewed" or otherwise exempt from the syndicated exclusivity rules in effect as of June 24, 1981. In such cases, the syndicated exclusivity surcharge shall continue to be paid at the same level as before.

Section 553(d) of the Administrative Procedure Act requires that publication of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

The right to demand blackout began January 1, 1990. The Tribunal was petitioned by CATA in May, 1989 and by NCTA in June, 1989 to eliminate the surcharge, but the Tribunal deferred the commencement of the proceeding until after the implementation of the new rules. However, the Tribunal announced on March 20, 1990 that any rate adjustment made by the Tribunal in this proceeding would apply to the first semiannual accounting period of 1990, which payments are due to the Copyright Office by August 29, 1990. 55 FR 10280. An announcement of the outcome of this proceeding was made by an order of the Tribunal on July 18, 1990.

Accordingly, the Tribunal, in view of the time requirement for making royalty payments by August 29, 1990, finds, for good cause, that the effective date of the surcharge rate adjustment is the date of publication of this determination in the **Federal Register.**

List of Subjects in 37 CFR Part 308

Cable television, Copyright.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR part 308 as follows:

PART 308—ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

1. The authority citation for part 308 is revised to read as follows:

Authority: 17 U.S.C. 801(b)(2) (A), (C) and (D).

2. Section 308.2(d) (1) and (2) is revised to read as follows:

§ 308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

* * * * *

(d) Commencing with the first semiannual accounting period of 1990 and for each semiannual accounting period thereafter, in the case of a commercial VHF station more than 35 miles from a cable system but which places a predicted Grade B contour, in whole or in part, over the cable system, and is not "significantly viewed" or otherwise exempt from the FCC's syndicated exclusivity rules in effect on June 24, 1981, for each distant signal equivalent or fraction thereof represented by the carriage of such signal, the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section,

(1) For cable systems located wholly or in part within a top 50 television market,

(i) .599 per centum of such gross receipts for the first distant signal equivalent;

(ii) .377 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) .178 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(2) For cable systems located wholly or in part within a second 50 television market,

(i) .300 per centum of such gross receipts for the first distant signal equivalent;

(ii) .189 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) .089 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

* * * * *

Dated: August 9, 1990.

J.C. Argetsinger,

Chairman.

[FR Doc. 90–19218 Filed 8–15–90; 8:45 am]

BILLING CODE 1480–09–M

federal register

Thursday
August 16, 1990

Part IV

Department of Education

34 CFR Part 231 et al.
Drug-Free Schools and Communities Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 231, 232, 233, 234, 235, 236, 764, 765, 766

RIN 1810-AA56

Drug-Free Schools and Communities Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary is proposing regulations to implement the Emergency Grants Program authorized by the Drug-Free Schools and Communities Act of 1986 (Act), as amended by the Drug-Free Schools and Communities Act Amendments of 1989 (1989 Amendments) (Pub. L. 101-226), and the School Personnel Training Grants Program authorized by the Anti-Drug Abuse Act of 1988 (1988 Amendments) (Pub. L. 100-690), as amended by the 1989 Amendments. The Secretary also is proposing to revise and renumber the regulations governing the Demonstration Grants Program and the Federal Activities Grants Program.

DATES: Comments must be received on or before September 17, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Allen King, U.S. Department of Education, Office of Elementary and Secondary Education, Drug-Free Schools and Communities Staff, 400 Maryland Avenue SW., Washington, DC 20202-6439.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Allen King, U.S. Department of Education, Drug-Free Schools and Communities Staff, 400 Maryland Avenue SW., Washington, DC 20202-6439; telephone (202) 401-1599.

SUPPLEMENTARY INFORMATION:

Background

The 1989 Amendments authorized a new Emergency Grants Program under section 5136 of the Act to provide additional financial assistance to local educational agencies (LEAs) experiencing a significant drug and alcohol abuse problem. The 1988 Amendments created an additional authority for the training of teachers in part C of the Act. The 1989 Amendments repealed the teacher training authority in section 5131(b) of the Act, and broadened the training authority in part C to include all school personnel. As amended, part C now authorizes grants to institutions of higher education (IHEs), State educational agencies (SEAs), intermediate educational agencies (IEAs), and LEAs, or consortia thereof, for the training of teachers, administrators, guidance counselors and other school personnel. "School personnel" is defined in section 5141(b)(10) of the Act as teachers, administrators, guidance counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis. These proposed regulations would govern the administration of the new Emergency Grants Program and the amended School Personnel Training Grants Program.

These proposed regulations also revise and renumber existing regulations in 34 CFR parts 764, 765, and 766. These parts govern the administration of the Drug-Free Schools and Communities Training and Demonstration Grants to Institutions of Higher Education (part 764 and part 765) and the Federal Activities Grants Program (part 764 and part 766). The revision is necessary because all references to training in part 765 must be deleted, in accordance with the 1989 Amendments. Renumbering is being done because administration of the programs in these parts is related to administration of the Emergency Grants Program and the School Personnel Training Program and, therefore, the four programs can be grouped together with a common General Provisions Part.

Summary of Proposed Regulations

The following paragraphs summarize the provisions of the proposed regulations.

Part 231—General Provisions

Part 231 is a revision of part 764—Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program—General Provisions. The two major changes are the extension of the applicability of the General Provisions to two additional programs, the Emergency Grants Program and the School Personnel Training Grants Program; and the inclusion of selection criteria in § 231.22 that the Secretary will use to evaluate applications submitted under parts 232, 233, 234, and 235.

The proposed criteria reflect the need for applicants to assess their needs carefully and propose strategies that are based upon research findings or have been evaluated for effectiveness.

In the existing regulations, the selection criteria are published separately in parts 765 and 766. However, because the criteria for the two programs are almost identical, and are also appropriate for the Emergency Grants Program and the School Personnel Training Grants Program, the Secretary proposes placing the criteria in the General Provisions part.

The Secretary has also proposed, in § 231.24 (a revision of § 764.22), new provisions related to limiting the use of grant funds for the purchase of commercially available curricula or for the inservice or preservice training associated with commercially available curricula. The Secretary generally views those costs as part of the regular operation of a school system and, consequently, they may not be appropriate for the purposes of these programs.

Part 232—Drug-Free Schools and Communities Emergency Grants Program

Part 232 would govern the Emergency Grants Program authorized by section 5136 of the Act. This program is designed to assist LEAs with a significant need for additional funds to combat drug and alcohol abuse by students. To be eligible, LEAs must be receiving, or eligible to receive, a concentration grant under section 1006 of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965, as amended, and serve an area—

- In which there is a large number or high percentage of arrests for, or while under the influence of, drugs or alcohol; or convictions of youth for drug- or alcohol-related crimes;
- In which there is a large number or high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and
- That has a significant drug and alcohol abuse problem.

The minimum and maximum grants established by the statute are $100,000 and $1,000,000 respectively. The statute does not specify the types of projects that the Secretary may fund under this authority. The listing of projects proposed in the regulations represents the types of activities that would be responsive to LEAs with special needs; however, the Secretary wants to provide maximum flexibility for LEAs to develop applications for projects that are responsive to their special needs. Projects may include:

- The development and implementation of comprehensive, community-wide programs that involve law enforcement, judicial and local

government officials, community leaders, parents, and the clergy;

• The provision of technical assistance to schools in the prevention of unlawful possession, use, or distribution of illicit drugs and alcohol to students on school premises or as a part of any school activities; or

• The implementation of innovative approaches to combatting drug and alcohol abuse in a particular LEA that are consistent with the purposes of the Act.

Under the proposed regulations, the Secretary could establish priorities from among the types of projects listed. This would permit the Secretary to solicit applications for projects that are responsive to unmet national needs for particular kinds of alcohol and drug abuse education and prevention programs. The Secretary could also limit a priority to a particular educational level, type of substance abuse, or any combination of these levels or types; to programs such as cooperative programs with other local agencies involved in alcohol and drug abuse prevention activities; and to programs that involve parents, teachers, or school administrators by educating these groups about the causes, symptoms, and effects of alcohol and drug use.

Part 233—Drug-Free Schools and Communities School Personnel Training Grants Program

Part 233 would govern the program for training teachers, counselors, and other school personnel authorized by part C of the Act. Funds made available under this program are to be used to establish, expand, or enhance programs for the training of school personnel concerning drug and alcohol abuse education and prevention. The statute identifies SEAs, LEAs, IEAs, IHEs, or consortia thereof, as eligible grantees.

The statute requires an application for a grant to contain—

• The activities and programs to be carried out with the funds made available;

• An estimate of the cost for the establishment and operation of such programs; and

• Assurances that the Federal funds made available will be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of those Federal Funds, be made available by the applicant for the purpose described, and in no case supplant those funds.

The statute also requires that any project funded under this authority must be coordinated through the State agency for higher education or State educational agency as appropriate, and must be coordinated, as appropriate, with the activities of the Regional Center for Drug-Free Schools and Communities.

The statute does not specify the types of projects that the Secretary may fund under this authority. The listing of projects in the proposed regulations represents a broad spectrum of training activities, including:

• Establishing, expanding, or enhancing programs and activities for the training of school personnel concerning drug and alcohol abuse education and prevention.

• Training teachers, administrators, guidance counselors, social workers, psychologists, nurses, librarians and other support staff who work with high-risk youth in the area of drug and alcohol abuse education and prevention.

• Training school personnel other than teachers and administrators in drug and alcohol abuse prevention.

• Training teachers, administrators, guidance counselors, and other school personnel in the implementation of innovative programs for drug and alcohol abuse education and prevention, including programs that focus on the children of alcoholics.

• Training teachers, administrators, guidance counselors, and other school personnel in how to involve the family and community in drug and alcohol abuse prevention, education, and intervention programs, particularly programs that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements.

Under the proposed regulations, the Secretary could establish priorities from among the types of projects listed. This would permit the Secretary to solicit applications for projects that are responsive to unmet national needs for particular kinds of alcohol and drug abuse education and prevention training programs. The Secretary could also limit a priority to a particular educational level, type of substance abuse, type of personnel to be trained including teachers, school administrators, or other school personnel, or any combination thereof.

Part 234—Drug-Free Schools and Communities Demonstration Grants Program

Part 234 would replace the current part 765—Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education. The proposed regulations implement the statutory authority for model demonstration programs to be coordinated with local elementary and secondary schools for the development and implementation of quality drug and alcohol abuse education and prevention programs. The statute specifies IHEs as the only eligible grantees.

Under the statute, the Secretary must give priority consideration to joint projects involving faculty of IHEs and teachers in elementary and secondary schools in the practical application of the findings of educational research and evaluation and the integration of that research into drug and alcohol abuse education and prevention programs. The statute does not specify the types of projects that the Secretary may fund under this authority; however, the proposed regulations list, as examples of eligible activities, projects that—

• Demonstrate the effectiveness of drug and alcohol prevention strategies. These demonstration projects would test the theories of prevention, assess techniques to improve program delivery, and modify effective strategies to serve the needs of other populations, such as high-risk youth.

• Demonstrate research-based strategies that focus on the specific knowledge, skills, attitudes, and other factors that protect individuals from drug and alcohol use and abuse.

• Demonstrate the results of innovative teacher preparatory programs or model certification requirements that enhance drug and alcohol abuse education and prevention teaching practices.

• Utilize research findings in the development and assessment of innovative methods and models for drug and alcohol abuse education and prevention.

Under the proposed regulations, the Secretary could establish priorities from among the types of projects listed in § 234.3. This would permit the Secretary to solicit applications that are responsive to unmet national needs for particular kinds of demonstration programs. The Secretary could also limit any priority to a particular educational level, type of substance abuse, or any combination thereof.

Part 235—Drug-Free Schools and Communities Federal Activities Grants Program

Part 235 would replace the current part 766—Drug-Free Schools and Communities Program—Federal Activities Grants Program. The proposed regulations implement the Secretary's authority to carry out Federal education and prevention activities on drug and alcohol abuse.

Under the statute, the parties eligible to receive grants are SEAs, LEAs, IHEs, and other nonprofit agencies, organizations, and institutions.

Under the proposed regulations, the Secretary could fund projects that:

- Develop, disseminate information about, or evaluate comprehensive alcohol and drug abuse education and prevention approaches and programs that meet the needs of elementary and secondary school students.
- Develop, disseminate information about, or evaluate community-based alcohol and drug abuse education and prevention approaches and programs, such as educational after-school programs designed for students who are at high risk of becoming drug users.
- Develop and evaluate innovative strategies to communicate age-appropriate anti-drug abuse messages to youths.
- Expand and evaluate existing alternative programs—particularly programs that involve parents, local law enforcement officials, judicial officials, and community leaders—that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements.
- Develop materials for dissemination that describe the implementation of successful alternative programs—particularly programs that involve parents, local law enforcement officials, judicial officials, and community leaders—that have proven to be effective in returning to traditional school settings students who have been suspended or removed because of their use of alcohol or other drugs.
- Develop, disseminate information about, or evaluate exemplary programs for special target groups such as children of alcoholics, or for special purposes such as preventing use by students of "gateway drugs" such as tobacco and alcohol.
- Develop, disseminate information about, or evaluate successful alternative programs that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements.
- Present an innovative approach to combatting drug and alcohol abuse that is consistent with the purposes of the Act.

Under the proposed regulations the Secretary could, in response to unmet national needs, select as a priority one or more of the types of projects listed in § 235.4, or limit a priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The proposed regulations do not impose burdensome requirements on applicants or grantees. They establish requirements for participation in the program and would not have a significant economic impact on entities participating in the program.

Paperwork Reduction Act of 1980

Sections 231.22, 231.30, 232.4, 233.3 and 235.3 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attn: Daniel J. Chenok.

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period in room 2135, FOB #6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing the regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Parts 231, 232, 233, 234, and 235

Drug abuse, Drug-Free Schools and Communities, Education Department, Elementary and secondary education, Grant Programs—Education, Local educational agencies, Reporting and recordkeeping, State educational agencies.

(Catalog of Federal Domestic Assistance Number has not been assigned, Emergency Grants; 84.207A School Personnel Training Grants; 84.184A Demonstration Grants; and 84.184B Federal Activities Grants)

Dated: August 8, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by removing parts 764, 765, and 766, redesignating part 235 as part 236, and by adding parts 231, 232, 233, 234, and 235 as follows:

1. A new part 231 is added to read as follows:

PART 231—DRUG-FREE SCHOOLS AND COMMUNITIES—GENERAL PROVISIONS

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Subpart A—General

§ 231.1 What are the Drug-Free Schools and Communities Programs?

The programs described in 34 CFR parts 232, 233, 234, and 235 provide assistance for drug and alcohol abuse education and prevention projects.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212)

§ 231.2 What types of awards does the Secretary make under these programs?

The Secretary awards grants and cooperative agreements under these programs.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212)

§ 231.3 What regulations apply to these programs?

The following regulations apply to the Drug-Free Schools and Communities Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying) and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants)).

(b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98.

(c) The regulations in 34 CFR parts 231, 232, 233, 234, and 235.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212)

§ 231.4 What definitions apply to these programs?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in this part and 34 CFR parts 232–235 are defined in section 5141 of the Drug-Free Schools and Communities Act:

Drug abuse education and prevention
Consortium (except as used in part 233)
Illicit Drug use
Institution of higher education (IHE)
Nonprofit
School personnel
State

(b) *Definitions in EDGAR.* The following terms used in this part and in parts 232–235 are defined in 34 CFR part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Equipment
Facilities
Fiscal Year
Grant
Local educational agency (LEA)
Private
Project
Public
Secretary
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this part and parts 232–235:

Act means the Drug-Free Schools and Communities Act of 1986, as amended.

Regional Center means a Regional Center for Drug-Free Schools and Communities authorized by section 5135 of the Act.

(Authority: 20 U.S.C. 3216, 3298, 3211, 3212, 3221)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 231.20 How does the Secretary evaluate applications?

(a) For each competition, the Secretary evaluates an application submitted under these programs on the basis of the selection criteria in § 231.22.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the criteria in § 231.22.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212)

§ 231.21 How does the Secretary evaluate unsolicited applications?

(a) The Secretary may fund an application that was not solicited under an application notice (referred to in this section as an unsolicited application) if—

(1) The application furthers the purposes and objectives of the program;

(2) The applicant meets all requirements for funding under the program;

(3) The application rates high enough to deserve selection based on the selection criteria and any other statutory or regulatory requirements that apply to the program; and

(4) Selection of the application will not deplete to an insufficient level the amount of funds available under the regular award process.

(b) The Secretary may refuse to consider an unsolicited application that meets a priority established for that fiscal year.

(c) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register.**

(d) In evaluating an unsolicited application, the Secretary assigns the 15 points reserved under § 231.20(b) to the selection criterion in § 231.22(a) (Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities) so that the maximum number of possible points for this criterion is 50.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212)

§ 231.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (20 points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The appropriateness of the means by which the applicant identified the needs to be addressed by the project and, if appropriate, the extent to which the applicant involved school officials, parents, law enforcement officials, and other community leaders in identifying these needs;

(2) The extent to which the project's objectives apply to these needs and incorporate research findings likely to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which the project's objectives form the basis of the proposed activities and the extent to which those activities are designed to

demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of services from meeting the project's objectives;

(5) The degree to which the project meets any priorities announced by the Secretary under 34 CFR 232.6, for the Emergency Grants Program; 34 CFR 233.5, for the School Personnel Grants Program; 34 CFR 234.4, for the Demonstration Grants Program; or 34 CFR 235.5, for the Federal Activities Grants Program, whichever is appropriate;

(6) The likelihood that the project will result in a model, or the provision of other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems; and

(7) The extent of the applicant's plans for disseminating this model or information to others.

(b) *Relationship to drug prevention programs implemented to comply with the Drug-Free Schools and Campuses regulations.* (10 points) The Secretary reviews each application to determine the extent to which the applicant relates the objectives of the proposed project to developing, implementing, and improving the prevention programs and policies for students adopted and implemented to comply with the requirements of the Drug-Free Schools and Campuses regulations in 34 CFR part 86, section 86.200.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How well the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(4) The extent to which the budget is adequate to support the project;

(5) The extent to which costs are reasonable in relation to the objectives of the project; and

(6) For an applicant proposing training, the extent to which the applicant demonstrates familiarity with available training materials.

(d) *Quality of key personnel.* (10 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(e) *Evaluation plan.* (20 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Relate to the objectives for the project referred to under the selection criterion in paragraph (a) of this section. The design and implementation of evaluation activities must be consistent with and appropriate to the stated objectives;

(3) To the extent possible, are objective and produce data that are quantifiable; and

(4) Enhance the potential for effectively disseminating information and replicating the project.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(f) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project or similar activities when Federal assistance ends.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212).

§ 231.23 How does the Secretary ensure distribution and diversity of projects?

The Secretary may select applications other than those most highly rated for funding if doing so would improve—

(a) The geographic distribution of projects funded;

(b) The diversity of activities or projects funded;

(c) Under part 234, the equitable participation of private and public institutions of higher education, including community and junior colleges; or

(d) Under part 234, the participation of colleges and universities of limited enrollment.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212)

§ 231.24 May the Secretary restrict the use of funds for a particular purpose?

The Secretary may restrict the amount of funds made available through a grant under these programs that may be used—

(a) To purchase equipment;

(b) To purchase commercially available curricula; or

(c) To pay for inservice or preservice training associated with commercially available curricula.

(Authority: 20 U.S.C. 3216, 3198, 3211, 3212)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 231.30 What must project materials state regarding illicit drug use?

Any materials produced or distributed with funds made available under the Act must reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 3224)

2. A new part 232 is added to read as follows:

PART 232—DRUG-FREE SCHOOLS AND COMMUNITIES EMERGENCY GRANTS PROGRAM

Sec

Authority: 20 U.S.C. 3216, unless otherwise noted.

§ 232.1 What is the Drug-Free Schools and Communities Emergency Grants Program?

The Drug-Free Schools and Communities Emergency Grants Program provides assistance to eligible local educational agencies that demonstrate significant need for additional assistance for purposes of combating drug and alcohol abuse by students served by those agencies.

(Authority: 20 U.S.C. 3216)

§ 232.2 What parties are eligible for a grant under this program?

A local educational agency is eligible to receive a grant if it receives, or is eligible to receive, assistance under section 1006 of chapter 1 of title 1 of the Elementary and Secondary Education

Act of 1965, as amended (20 U.S.C. 2712) and serves an area—

(a) In which there is a large number or high percentage of—

(1) Arrests for, or while under the influence of, drugs or alcohol; or

(2) Convictions of youth for drug- or alcohol-related crimes;

(b) In which there is a large number or high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(c) That has a significant drug and alcohol abuse problem.

(Authority: 20 U.S.C. 3216)

§ 232.3 What are the minimum and maximum grant awards under this program?

The minimum grant award is $100,000; the maximum is $1,000,000.

(Authority: 20 U.S.C. 3216)

§ 232.4 What must an application include?

In addition to describing the activities and programs to be carried out with funds made available under this part, an application must include, at a minimum—

(a) An assessment of the current drug and alcohol abuse problem in the school or schools on which the project is to focus, including—

(1) The number or percentage of arrests for, or while under the influence of drugs, or alcohol;

(2) The number or percentage of convictions of youths for drug- or alcohol-related crimes;

(3) The number or percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(4) Other data indicating a significant drug and alcohol abuse problem; and

(b) Procedures for monitoring throughout the project the drug and alcohol problem in that school or schools.

(Authority: 20 U.S.C. 3216)

§ 232.5 What types of projects may the Secretary assist under this program?

The Secretary may fund projects that—

(a) Support the development and implementation of comprehensive, community-wide drug and alcohol abuse education and prevention programs that involve school personnel, law enforcement officials, judicial officials, local government officials, the clergy, community leaders, and parents;

(b) Provide technical assistance to schools in the prevention of unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as a part of any school activities;

(c) Present an innovative approach to combating drug and alcohol abuse in the LEA that is consistent with the purposes of the Act; or

(d) Involve parents, teachers, and school administrators in preventing drug and alcohol use by students through such activities as educating those parents, teachers, and school administrators about the causes, symptoms, and effects of alcohol and drug use.

(Authority: 20 U.S.C. 3216)

§ 232.6 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 232.5. The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

(Authority: 20 U.S.C. 3216)

§ 232.7 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Emergency Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 232.

(Authority: 20 U.S.C. 3216)

§ 232.8 What definitions apply to this program?

The definitions in 34 CFR 231.4 apply to this program.

(Authority: 20 U.S.C. 3216, 3221)

3. A new part 233 is added to read as follows:

PART 233—DRUG-FREE SCHOOLS AND COMMUNITIES SCHOOL PERSONNEL TRAINING GRANTS PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—What Conditions Must Be Met by a Grantee?

Authority: 20 U.S.C. 3198, unless otherwise noted.

Subpart A—General

§ 233.1 What is the Drug-Free Schools and Communities School Personnel Training Grants Program?

The Drug-Free Schools and Communities School Personnel Training Grants Program provides assistance to establish, expand, or enhance programs and activities to train teachers, administrators, guidance counselors, and other school personnel including social workers, psychologists, nurses, librarians, and support staff concerning drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 3198)

§ 233.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to SEAs, LEAs, IHEs, intermediate educational agencies, or a consortium of these organizations.

(Authority: 20 U.S.C. 3198)

§ 233.3 What must an application include?

Each application must—

(a) Describe the activities and programs to be carried out with funds made available under this part;

(b) Contain an estimate of the cost for the establishment and operation of such programs;

(c) Provide assurances that the Federal funds made available shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds; and

(d) Provide assurances of compliance with the provisions of this part.

(Authority: 20 U.S.C. 3198)

§ 233.4 What types of projects may the Secretary assist under this program?

The Secretary may fund projects that—

(a) Establish, expand, or enhance programs and activities for the training of school personnel (including programs designed exclusively for school personnel other than teachers and administrators), concerning drug and alcohol abuse education and prevention;

(b) Train teachers, administrators, guidance counselors, social workers, psychologists, nurses, librarians and other support staff who work with high-risk youth in the area of drug and alcohol abuse education and prevention. A high-risk youth is an individual who is under 21 years of age and is at high risk of becoming, or has been a drug or alcohol abuser, and who—

(1) Is a school dropout;

(2) Has experienced repeated failure in school;

(3) Has become pregnant;

(4) Is economically disadvantaged;

(5) Is the child of a drug or alcohol abuser;

(6) Is a victim of physical, sexual, or psychological abuse;

(7) Has committed a violent or delinquent act;

(8) Has experienced mental health problems;

(9) Has attempted suicide;

(10) Has experienced long-term physical pain due to injury; or

(11) Is a juvenile in a detention facility within the State;

(c) Train teachers, administrators, guidance counselors, and other school personnel in the implementation of innovative programs for drug and alcohol abuse education and prevention, including programs that focus on the children of alcoholics; or

(d) Train teachers, administrators, guidance counselors, and other school personnel in how to involve the family and community in drug and alcohol abuse prevention, education, and intervention programs, particularly programs that use innovative approaches to help students, who have been suspended or otherwise removed from school because of their alcohol or other drug use, return to school and complete graduation requirements.

(Authority: 20 U.S.C. 3198)

§ 233.5 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 233.4. The Secretary may limit any priority to a particular educational level, type of substance abuse, type of personnel to be trained including teachers, school administrators, or other school personnel, or any combination thereof.

(Authority: 20 U.S.C. 3198)

§ 233.6 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities School Personnel Training Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 233.

(Authority: 20 U.S.C. 3198)

§ 233.7 What definitions apply to this program?

(a) The definitions in 34 CFR 231.4 apply to this program.

(b) As used in this part, "consortium" is defined in section 5128(c) of the Drug-Free Schools and Communities Act.

(Authority: 20 U.S.C. 3198, 3221)

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—What Conditions Must Be Met by a Grantee?

§ 233.30 What coordination with other agencies must a project include?

A project must include—

(a) Coordination through the State agency for higher education or SEA, as appropriate; and

(b) Coordination with the appropriate Regional Center.

(Authority: 20 U.S.C. 3198)

4. A new part 234 is added to read as follows:

PART 234—DRUG-FREE SCHOOLS AND COMMUNITIES DEMONSTRATION GRANTS PROGRAM

Sec.

Authority: 20 U.S.C. 3211, unless otherwise noted.

§ 234.1 What is the Drug-Free Schools and Communities Demonstration Grants Program?

The Drug-Free Schools and Communities Demonstration Grants Program supports grants to IHEs for model demonstration programs coordinated with local elementary and secondary schools for the development and implementation of quality drug and alcohol abuse education and prevention programs.

(Authority: 20 U.S.C. 3211)

§ 234.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to IHEs and consortia of IHEs.

(Authority: 20 U.S.C. 3211)

§ 234.3 What types of projects does the Secretary assist under this program?

The Secretary may fund projects that—

(a) Demonstrate the effectiveness of drug and alcohol prevention strategies. These demonstration projects would test the theories of prevention, assess techniques to improve program delivery, and modify effective strategies to serve the needs of other populations, such as high-risk youth;

(b) Demonstrate research-based strategies that focus on the specific knowledge, skills, attitudes, and other factors that protect individuals from drug and alcohol use and abuse;

(c) Demonstrate the results of innovative teacher preparatory programs or model certification requirements that enhance drug and alcohol abuse education and prevention teaching practices; or

(d) Utilize research findings in the development and assessment of innovative methods and models for drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 3211)

§ 234.4 How does the Secretary establish priorities for this program?

(a) In making awards for the types of projects described in § 234.3, the Secretary gives priority to joint projects involving faculty of IHEs, teachers in elementary and secondary schools, and community representatives in the practical application of the findings of educational research and evaluation and the integration of research into drug and alcohol abuse education and prevention programs.

(b) In addition to the priority in paragraph (a), the Secretary may select as a priority one or more of the types of projects listed in § 234.3. The Secretary selects these priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(c) The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination thereof.

(Authority: 20 U.S.C. 3211)

§ 234.5 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Demonstration Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 234.

(Authority: 20 U.S.C. 3211)

§ 234.6 What definitions apply to this program?

The definitions in 34 CFR 231.4 apply to this program.

(Authority: 20 U.S.C. 3211, 3221)

5. Part 235 is redesignated as part 236, and the authority citation for part 236 is revised to read as follows:

Authority: 20 U.S.C. 3215, unless otherwise noted.

6. A new part 235 is added to read as follows:

PART 235—DRUG-FREE SCHOOLS AND COMMUNITIES FEDERAL ACTIVITIES GRANTS PROGRAM

Sec.

Authority: 20 U.S.C. 3212, unless otherwise noted.

§ 235.1 What is the Drug-Free Schools and Communities Federal Activities Grants Program?

The Drug-Free Schools and Communities Federal Activities Grants Program supports the development and implementation, dissemination, and evaluation of educational strategies and programs that are designed to prevent the abuse of alcohol and other drugs.

(Authority: 20 U.S.C. 3212)

§ 235.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to SEAs, LEAs, IHEs, and other nonprofit agencies, organizations, and institutions.

(Authority: 20 U.S.C. 3212)

§ 235.3 What must an application include?

Each application must include—

(a) An initial assessment of the current drug and alcohol problem in the school or schools on which the project is to focus, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students; and

(b) Procedures for monitoring throughout the project the drug and alcohol problem in that school or schools, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students.

(Authority: 20 U.S.C. 3212)

§ 235.4 What types of projects may the Secretary assist under this program?

The Secretary may fund projects that—

(a) Develop and implement, disseminate information about, or evaluate comprehensive alcohol and drug abuse education and prevention approaches and programs that meet the needs of elementary and secondary school students;

(b) Develop and implement, disseminate information about, or evaluate community-based alcohol and drug abuse education and prevention approaches and programs, such as educational afterschool programs designed for students who are at high risk of becoming drug users;

(c) Develop, implement, or evaluate innovative strategies to communicate age-appropriate anti-drug abuse messages to youths;

(d) Expand and evaluate existing alternative programs—particularly programs that involve parents, local law enforcement officials, judicial officials, and community leaders—that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements;

(e) Develop materials for dissemination that describe the implementation of successful alternative programs—particularly programs that involve parents, local law enforcement officials, judicial officials, and community leaders—that have proven to be effective in returning to traditional school settings students who have been suspended or removed because of their use of alcohol or other drugs;

(f) Develop, disseminate information about, or evaluate successful alternative programs that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements;

(g) Develop, disseminate information about, or evaluate exemplary programs for special target groups such as children of alcoholics, or for special purposes such as preventing use by students of "gateway drugs" such as tobacco and alcohol; or

(h) Present an innovative approach to combating drug and alcohol abuse that is consistent with the purposes of the Act.

(Authority: 20 U.S.C. 3212)

§ 235.5 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into account unmet national needs for drug and alcohol abuse education and prevention programs.

(b) The Secretary may select as a priority one or more, or a combination of, the types of projects listed in § 235.4. The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

(Authority: 20 U.S.C. 3212)

§ 235.6 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Federal Activities Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 235.

(Authority: 20 U.S.C. 3212)

§ 235.7 What definitions apply to this program?

The definitions in 34 CFR 231.4 apply to this program.

(Authority: 20 U.S.C. 3212, 3221)

PART 764 [REMOVED]

7. Part 764 is removed.

PART 765 [REMOVED]

8. Part 765 is removed.

PART 766 [REMOVED]

9. Part 766 is removed.

[FR Doc. 90-19254 Filed 8-15-90; 8:45 am]
BILLING CODE 4000-01-M

federal register

Thursday
August 16, 1990

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1990–91 Hunting Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA93

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1990-91 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The use of lead shot in waterfowl hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this final rule describes the zones in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1990-91 season. The zones described consist of: (1) The same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in sec. 20.108 of title 50 of the Code of Federal Regulations (50 CFR) for the 1989-90 hunting season; (2) the added counties identified for 1990-91 in appendix N of the Final Supplemental Environmental Impact Statement (SEIS) on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in Supplementary Information); and (3) those additional areas identified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems. States that have declared a statewide ban on the use of lead shot for waterfowl and coot hunting are so noted.

EFFECTIVE DATE: August 16, 1990.

FOR FURTHER INFORMATION CONTACT: Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240 (703/358-1773); or write Director (FWS/MBMO) U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: This rule implements the fourth year (1990-91) of the 5-year component of the strategy to phase-in a nontoxic shot requirement for waterfowl hunting nationwide by the 1991-92 season, as set out by the preferred alternative of the Final SEIS on the Use of Lead Shot for Hunting Migratory Birds in the United States published in June 1986 (FES 86-16). The SEIS and consequent rulemakings imposing nontoxic shot requirements result from the Secretary of Interior's responsibilities under the Migratory Bird Treaty Act of 1918 (MBTA), as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will be allowed. A critical element in the Department of the Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987-88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_3), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative and published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rules for the 1987-88, 1988-89 and 1989-90 waterfowl hunting seasons published in the **Federal Register** on Tuesday, July 21, 1987 (52 FR 27352), Tuesday, June 28, 1988 (53 FR 24284) and Thursday, April 13, 1989 (54 FR 14814), respectively.

Counties scheduled to convert in their entireties to nontoxic shot in the 1990-91 waterfowl season are those counties having had an average annual waterfowl harvest of 5 or more per square mile over the 10-year period 1971-80. As scheduled, approximately 85-90 percent of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1990-91 waterfowl hunting season. However, the conversion of 24 entire States ahead of this year's schedule is estimated to increase to approximately 92 the percentage of the total waterfowl harvest that will occur in nontoxic shot zones in the upcoming waterfowl hunting season.

The rulemaking process for migratory bird hunting operates under extremely tight time constraints. However, the Service also attempts to provide the greatest opportunity for the States and the public to comment, and to give State wildlife commissions/councils time to approve regulatory proposals. Doing this, often, does not allow sufficient flexibility to give 30-day effective dates because of early-season frameworks that could result in placing a rule in effect after the start of the season. Thus, it is not in the public interest to provide a 30-day effective date (as specified in 5 U.S.C. 553) for this rulemaking and it will be effective immediately upon publication in the **Federal Register.**

Summary of General Public Comment on the Proposed Rule

Outside of official State responses, just three comments were received on the proposed rule (55 FR 15249) for this final rule during the 30-day comment period that ended on May 23, 1990. Two of these comments were submitted by phone and the other by mail.

In the letter, an Illinois waterfowler requested that the Service: (1) Provide him information "* * * detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot * * *;" (2) for him, identify in the pertinent documents the information that provides the scientific basis for the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds and identify the migratory birds affected; (3) provide the scientifically documented evidence of the total number of migratory birds spared from lead poisoning resulting from waterfowl hunting during the 1987-88, 1988-89 and 1989-90 seasons due to the implementation of steel shot regulations; and (4) provide the crippling rates for each flyway beginning with the 1965-66 season to the current year and the total national rate for each year for both ducks and geese, and explain how the figures are derived.

The Service responded immediately with a letter directly to the commentor that the information requested in items (1) and (2) above is contained in the Draft and Final SEIS's completed in 1986, both of which were provided to him at that time. The Service's item (3) response indicated that despite the

documentation that lead poisoning has been a significant annual mortality factor in certain migratory birds, no one has gathered data documenting the number of birds spared from lead poisoning as a result of conversion to nontoxic shot over the periods specified. The Service also explained that lead poisoning will be with us for some time because lead will continue to be available on the bottoms of some water bodies where it is still within the reach of waterfowl; the numbers of spared birds is not strictly a function of converting zones. In response to item (4), the commentor was provided unretrieved harvest rates for the various Flyways, and nationwide, over most of the period specified. The last hunting year for which final information is currently available is 1988–89; the 1989–90 information is only preliminary. The 1989–90 report, "The preliminary estimates of waterfowl harvest and hunter activity in the United States during the 1989 hunting season," was made available in late July. In summary, the series shows that there has been an overall increase in unretrieved rates over the past four years, greater for ducks than for geese. In the last year the rate for ducks has declined; the rate for geese has declined over the past 2 years. In both cases, for ducks and geese, the differences between the pre-steel shot use rates and the preliminary 1989–90 rates are less than 2 percent. The series also shows that earlier crippling rates have been approximately as high as more recent ones. The commentor was advised that unretrieved harvest rate does not necessarily equate with crippling rate but is a rough approximation, and that the harvest numbers (both retrieved and unretrieved) are obtained from annual hunter questionnaires. Because of the manner in which they are obtained, the data are subject to human error. The unretrieved rate, sometimes expressed as a straight percentage of the total harvest or on the basis of each 100 birds retrieved, does not provide an absolute level of unretrieved harvest but is more valuable in terms of trends.

In a telephoned comment, a Georgia member of Quail Unlimited requested clarification of "* * * certain other species * * *," as given in the title of the proposed rule. Which other species may be covered in nontoxic shot restrictions was one of the subjects of the proposed and final rulemakings regarding the 1987–88 nontoxic shot zones (52 FR 1636; 52 FR 27352). In the final rulemaking, § 20.21(j) of title 50, Code of Federal Regulations, was changed to read that "* * * This restriction applies only to the taking of Anatidae (ducks, geese [including brant]), coots (Fulica americana) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, * * *" Thus, if one species of an aggregate bag is a nontoxic shot species all others of that aggregate are nontoxic shot species as well. The aggregate bag limit example given in the **Federal Register** notice referenced above was American coot and common moorhen (Gallinula chloropus).

The other telecommunicated comment was with regard to a reminder about the required use of steel shot for taking captive-reared mallards. On Tuesday, September 5, 1989, at 54 FR 36793, the Service finalized the proposal to require the use of nontoxic shot on game preserves, in field trials and during bona fide dog training activities when taking captive-reared mallards in nontoxic shot zones. The effective date of the requirement was set for September 1, 1990.

State-by-State Comments and Responses for the Proposed Rule

In summary, 14 of the affected 48 States directly responded to or in anticipation of the proposed rule for this final rule regarding "Zones in which lead shot will be prohibited for hunting waterfowl, coots and certain other species in the 1990–91 hunting season." With the addition this season of West Virginia, all "lower 48" States are affected by nontoxic shot zoning. All of the nationwide States failing to provide comment within the comment period were contacted either by the Service's Regional Offices or the Office of Migratory Bird Management to confirm that notification of the proposed rulemaking had been made. It is the policy of the Service to consult annually with the States with regard to the descriptions of converting zones through the 1991–92 waterfowl season nationwide phase-in of nontoxic shot. Because of pending wildlife commission approvals, the Service has delayed publication of this final rule to accommodate a number of States and to eliminate the necessity for final rule amendments.

The States of Florida and Oklahoma have substantially revised their nontoxic shot zone descriptions from those contained in the proposed rule. West Virginia has not previously had nontoxic shot zones but will have nontoxic shot restrictions this coming season, as noted below. New Jersey is accelerating their schedule and will convert statewide to nontoxic shot this fall. Twenty-four States will have converted statewide to nontoxic shot by the 1990–91 waterfowl hunting season.

Individual comments of the States responding to the proposed rule, during the comment period, are as follows:

Alabama

In a letter dated May 2, 1990, the Alabama Department of Conservation and Natural Resources concurred with the proposed rule addition to Baldwin, Mobile and Morgan Counties to the existing Alabama nontoxic shot zoning.

California

There was an inadvertent omission of Kings County, California, as a converting county in Table 1 of the proposed rule, although it was included in the description in the codified section. Kings County will appear in Table 1 of the final rule. This omission was raised by the Service' Regional Office, with subsequent notification to the State of California.

Colorado

In a letter dated May 7, 1990, the Colorado Department of Natural Resources, Division of Wildlife (DOW), made two comments on the proposal for State of Colorado nontoxic shot zoning. First, the DOW advised that Table 1 contained the names of two counties (Alamosa and Rio Grande) that were previously converted to nontoxic shot zones, and advised that the counties should be eliminated from the table in the final rule. Secondly, the DOW advised that Washington County was being proposed at the State level for conversion ahead of the appendix N schedule because of the potential for hunter confusion and law enforcement problems. However, the conversion of Washington County ahead of the schedule was pending Colorado Wildlife Commission approval in mid-July, a factor to be considered when establishing final rule publication.

The Service has removed Alamosa and Rio Grande Counties from the Table 1 list. Further, the DOW advised the Service on July 17, 1990, that the Colorado Wildlife Commission had approved the addition of Washington County as a nontoxic shot zone for this coming season. Accordingly, Washington County has been incorporated into the Colorado nontoxic shot zone descriptions in this final rule.

Delaware

The Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, in a letter dated May 4, 1990, advised the Service

that it concurs with the designation of all Delaware as a nontoxic shot zone. Prior to this current year, Delaware had only a single county (Sussex) remaining to be converted to nontoxic shot.

Florida

The Florida Game and Fresh Water Fish Commission (GFWFC) responded in a May 17, 1990, letter to the Service that they expected a commission vote to require nontoxic shot in the areas described in the proposed rule. However, the GFWFC further advised that these areas were proposed to be expanded in counties bordered by rivers, lakes and/or bays by including the adjacent wetland. Accordingly, the nontoxic shot zone descriptions for the State of Florida in the final rule have been considerably changed from those appearing in the proposed rule.

Idaho

The Idaho Department of Fish and Game, in a May 4, 1990, letter, agreed to implementation and enforcement of nontoxic shot requirements in the zones described in the proposed rule for the 1990–91 waterfowl hunting season. The changes for Idaho include adding: the remainders of Ada, Benewah, Bingham, Madison, and Power Counties, and all of Franklin, Fremont, Gem, Jerome, Minidoka, Oneida, and Twin Falls Counties.

Kentucky

In a May 23, 1990, letter, the Kentucky Department of Wildlife Resources (DWR) requested deferral of implementation of nontoxic shot regulations scheduled for two Kentucky counties, Bracken and Oldham, until the nationwide conversion in 1991–92. The Kentucky DWR cited potential difficulties in attaining administrative and law enforcement goals associated with converting these two isolated counties until surrounding counties are converted. The DWR also noted that the two counties only marginally made the cut-off for this year's conversion list and that there have been no reported waterfowl mortalities in either county related to lead shot ingestion.

On June 20, the Service denied the request for deferral on the basis that, without exception, it has held the States to the SEIS Appendix N schedule over the implementation period. Thus, the requirement has been equitable, if not convenient, for all States. The Service offered the Kentucky DWR nontoxic shot zone expansion alternatives to help avoid the potential problems identified, however, the DWR opted to stay on the Appendix N schedule.

Nebraska

The Nebraska Game and Parks Commission confirmed their statewide status for nontoxic shot by phone on May 14, 1990.

New Jersey

The New Jersey Division of Fish, Game and Wildlife (DFGW) advised the Service, in a May 11, 1990, letter, that the New Jersey Fish and Game Council (Council) had proposed to amend the Game Code to abolish the use of lead shot for waterfowl hunting statewide, and to require steel shot. However, the Council would not act upon adoption of the 1990–91 Game Code until a scheduled June 25 meeting. Subsequently, the Service was advised by letter that the Council had approved designation of all lands and waters of New Jersey for steel shot use only in waterfowling beginning with the 1990–91 season.

Oklahoma

The Oklahoma Department of Wildlife Conservation (DWC) redescribed Oklahoma's nontoxic shot zones provided in the proposed rule, on the basis of county and highway boundaries. In certain instances, the DWC has included additional areas of adjoining counties in order to encompass entire lakes bisected by county lines. In their redescription of nontoxic shot zones letter to the Service dated May 21, 1990, the DWC also advised that steel shot would be required for hunting sandhill cranes at Salt Plains and Washita National Wildlife Refuges.

South Carolina

By letter dated May 23, 1990, the South Carolina Wildlife and Marine Resources Department concurred with the proposed rule that all lands and waters within the State have been designated for nontoxic shot use only for waterfowling.

Texas

The Texas Parks and Wildlife Department, by letter dated May 18, 1990, acknowledged review of the proposed nontoxic shot zone descriptions for Texas for the 1990–91 waterfowl hunting season, and noted no changes.

West Virginia

Heretofore, West Virginia has not implemented nontoxic shot restrictions for waterfowl hunting within the State, nor has the State been required to do so because of the SEIS Appendix N schedule. By letter of May 18, 1990, the West Virginia Division of Natural Resources requested that the final rule be modified to indicate that all Sate-owned or State-leased wildlife management areas be designated for nontoxic shot use only. The State concurred with other portions of the proposed rule.

Wisconsin

The Wisconsin Department of Natural Resources, in a letter dated May 21, 1990, expressed strong support for the impending nationwide ban on the use of lead shot for waterfowl hunting and encouraged adoption of the proposed rule.

Wyoming

By telecommunication, the Wyoming Game and Fish Department advised that Sweetwater County was listed in the wrong section of the proposed rule—it should have been included in the Pacific Flyway rather than in the Central. Accordingly, the listing of Sweetwater County has been corrected in this final rule.

In summary, this rule amends § 20.108 of 50 CFR to add areas to expand existing nontoxic shot zones for the 1990–91 waterfowl hunting season.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient

supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to requirements of the ESA, a "section 7" consultation was done on the potential impacts of the provisions of this rule on bald eagles. The "section 7" opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a "section 7" opinion has concluded that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

TABLE 1.—COUNTIES PROPOSED (AT 55 FR 15249) TO BE ADDED IN 1990–91 TO THE EXISTING ZONES WHERE THE HUNTING OF WATERFOWL, COOT AND CERTAIN OTHER SPECIES IS LIMITED TO THE USE OF NONTOXIC SHOT.[1]

State and county
Alabama:
Baldwin
Mobile
Morgan
Arkansas:
All lands and waters of all counties of the State.
California:
Amador
Humboldt
Kern
Kings
Riverside
San Mateo
Ventura

TABLE 1.—COUNTIES PROPOSED (AT 55 FR 15249) TO BE ADDED IN 1990–91 TO THE EXISTING ZONES WHERE THE HUNTING OF WATERFOWL, COOT AND CERTAIN OTHER SPECIES IS LIMITED TO THE USE OF NONTOXIC SHOT.[1]—Continued

State and county
Colorado:
Adams
Larimer
Logan
Sedgwick
Washington
Delaware:
All lands and waters of all counties of the State.
Florida:
Escambia
Hamilton
Indian River
Jefferson
Okeechobee
Palm Beach
Seminole
Georgia:
Clay
Coweta
Elbert
Jackson
Lincoln
Long
Quitman
Idaho:
Ada
Benewah
Bingham
Franklin
Fremont
Gem
Jerome
Madison
Minidoka
Oneida
Power
Twin Falls
Illinois:
Bureau
Christian
Coles
Cook
Du Page
Greene
Grundy
Hancock
Jo Daviess
Kendall
Madison
Mercer
Monroe
Moultrie
Perry
Randolph
St. Clair
Tazewell
Whiteside
Will

TABLE 1.—COUNTIES PROPOSED (AT 55 FR 15249) TO BE ADDED IN 1990–91 TO THE EXISTING ZONES WHERE THE HUNTING OF WATERFOWL, COOT AND CERTAIN OTHER SPECIES IS LIMITED TO THE USE OF NONTOXIC SHOT.[1]—Continued

State and county
Winnebago
Kansas:
All lands and waters of all counties of the State.
Kentucky:
Bracken
Henderson
Oldham
Louisiana:
Ascension
Claiborne
De Soto
Iberville
LaFayette
Richland
Tangipahoa
Vernon
Maryland:
Caroline
Nevada:
Churchill
Douglas
Lincoln
New Jersey:
Bergen
Camden
Hunterdon
Morris
Passaic
Somerset
Sussex
North Carolina:
Bertie
Carteret
Chowan
Craven
Dare
Hyde
Pasquotank
Robeson
Ohio:
Ashtabula
Auglaize
Delaware
Geauga
Huron
Mahoning
Mercer
Pickaway
Wayne
Oklahoma:
Bryan
Cleveland
Haskell
Jackson
Lincoln
Love
Maves

TABLE 1.—COUNTIES PROPOSED (AT 55 FR 15249) TO BE ADDED IN 1990–91 TO THE EXISTING ZONES WHERE THE HUNTING OF WATERFOWL, COOT AND CERTAIN OTHER SPECIES IS LIMITED TO THE USE OF NONTOXIC SHOT.[1]—Continued

State and county
Noble
Oklahoma
Payne
Rogers
Washington
Oregon
Coos
Lincoln
Tennessee:
Carroll
Coffee
Gibson
Hamblen
Haywood
Henry
Perry
Rhea
Roane
Weakley
Wilson
Texas:
Austin
Bosque
Burleson
Cameron
Castro
Collin
Deaf Smith
Denton
Eastland
Erath
Henderson
Hood
Hunt
Kleberg
Moore
Red River
Refugio
Robertson
Rockwall
San Patricio
Shelby
Smith
Titus
Walker
Washington
Wise
Wood
Vermont:
Addison
Chittenden
Virginia:
Chesterfield
Essex
Henrico
King George
Lancaster
Louisa
Montgomery
Northampton
Powhatan
Richmond
Surry
Washington:
Adams
Benton
Grays Harbor
King
Lewis
Lincoln
Pierce
Spokane
Yakima
Wyoming
Sweetwater

[1] Counties listed are taken from the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, Appendix N. Counties listed are those that have 5 or more waterfowl harvested per square mile, as referenced by Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service, Spec. Sci. Rpt.-Wildl. No. 254, Washington, D.C.). "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bag limits and concurrent seasons. Differences between this Table and the Appendix N schedule reflect changes initiated by the States to accelerate county nontoxic shot conversions.

Authorship

The primary author of this final rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, part 20, Subchapter B, Chapter I of Title 50 of the "Code of Federal Regulations" is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 20.108 is revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

Connecticut

All lands and waters within the State of Connecticut have been designated for nontoxic shot use.

Delaware

All lands and waters within the State of Delaware have been designated for nontoxic shot use.

Florida

1. Brevard, Broward, Citrus, Collier, Dade, Glades, Indian River, Osceola, Palm Beach, Polk, St. Johns, and Volusia Counties.

2. Leon County—including the floodplains of the Ochlokonee River lying adjacent to Leon County and Lake Talquin.

3. Orange Lake and Lochloosa Lake in Alachua County.

4. Lake Okeechobee—the area lying lakeward of, and bounded by, the Lake Okeechobee Levee.

5. All waters of Lake George.

6. That area formerly known as the M–K Ranch public waterfowl area in Gulf County.

7. That portion of the St. Johns River floodplain lying in Lake and Orange Counties.

8. That portion of Lake Rousseau lying in Levy and Marion Counties.

9. Hickory Mount Impoundment within the Big Bend Wildlife Management Area in Taylor County.

10. Seminole County—including the floodplain of the Wekiva River lying adjacent to Seminole County.

11. Escambia County—including certain waters of Santa Rosa County described as follows: The floodplain of the Escambia River lying adjacent to Escambia County, Escambia Bay south and east of U.S. Highway 90, Pensacola Bay, East Bay west of the State Highway 87 bridge, the open waters of Blackwater Bay south and east of Interstate 10, and Santa Rosa Sound west of the Navarre bridge.

12. Jefferson County—including the floodplain of the Aucilla River lying adjacent to Jefferson County.

13. Hamilton County—including the floodplains of the Withlacoochee and Suwannee Rivers lying adjacent to Hamilton County.

14. Okeechobee County—including the floodplain of the Kissimmee River lying adjacent to Okeechobee County.

15. Chassahowitzka Wildlife Management Area in Hernando County, and the State waters of the Gulf of Mexico in Hernando County north of Raccoon Point designated by posted signs.

16. U.S. National Wildlife Refuges open to hunting.

Georgia

1. Clay, Cowetz, Dougherty, Elbert, Jackson, Lincoln, Long, McIntosh, and Quitman Counties.

2. The managed waterfowl impoundments on Oconee and West Point Wildlife Management Areas and Lake Juliette on Rum

Creek Wildlife Management Area. These Wildlife Management Areas are in Putnam; Heard and Troop; and Monroe Counties, respectively.

3. Eufala National Wildlife Refuge in Stewart County and Savannah National Wildlife Refuge in Chatham and Effingham Counties.

Maine

All lands and waters within the State of Maine have been designated for nontoxic shot use.

Maryland

1. Anne Arundel, Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Annes, Somerset, St. Marys, Talbot, Wicomico, and Worcester Counties.

Massachusetts

All lands and waters within the State of Massachusetts have been designated for nontoxic shot use.

New Hampshire

All lands and waters within the State of New Hampshire have been designated for nontoxic shot use.

New Jersey

All lands and waters within the State of New Jersey have been designated for nontoxic shot use.

New York

All lands and waters within the State of New York have been designated for nontoxic shot use.

North Carolina

1. Beaufort, Bertie, Carteret, Chowan, Craven, Currituck, Dare, Hyde, New Hanover, Pamlico, Pasquotank, Robeson, and Washington Counties.

2. New Hope Game Land, Butner-Falls of Neuse Game Land and posted waterfowl impoundments on other game lands.

Pennsylvania

All lands and waters within the State of Pennsylvania have been designated for nontoxic shot use.

Rhode Island

All lands and waters within the State of Rhode Island have been designated for nontoxic shot use.

South Carolina

All lands and waters within the State of South Carolina have been designated for nontoxic shot use.

Vermont

1. Addison, Chittenden, Franklin and Grand Isle Counties.

2. Missisquoi National Wildlife Refuge.

Virginia

1. Counties of Accomack, Charles City, Chesterfield, Essex, Gloucester, Henrico, James City, King George, King William, Lancaster, Louisa, Mathews, Middlesex, Montgomery, New Kent, Northampton, Northumberland, Powhatan, Richmond, Surry, Westmoreland and York.

2. Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg.

West Virginia

1. All State-owned and State-leased wildlife management areas have been designated for nontoxic shot use.

Mississippi Flyway

Alabama

1. Baldwin, Jackson, Limestone, Madison, Mobile and Morgan Counties.

2. Eufaula National Wildlife Refuge.

Arkansas

All lands and waters within the State of Arkansas have been designated for nontoxic shot use.

Illinois

1. Mississippi River and adjacent areas in the following counties bordered by the roads and/or lines indicated as follows:

A. All of Alexander, Calhoun, Carrol, Hancock, Henderson, Jackson, Jersey, Jo Daviess, Madison, Mercer, Monroe, Pike, Randolph, Rock Island, St. Clair, Union and Whiteside Counties.

B. Adams County; IL–96 (Lima), County Hwy–41, County Hwy–7, County Hwy–8 and Lock & Dam 20. The Mark Twain NWR, Bear Creek Unit, is also a nontoxic shot zone.

C. Henry County; I–80 and I–74/280.

2. Illinois River and adjacent areas in the following counties bordered by the roads and/or lines indicated as follows:

A. All of Bureau, Calhoun, Cass, Fulton, Greene, Grundy, Jersey, Marshall, Mason, Peoria, Pike, Putnam, Tazewell and Woodford Counties.

B. Brown County; County Hwy–3/FAS–582, FAS–582, County Hwy–12 and IL–99.

C. Morgan County; IL–104 (Meredosia) and IL–100/US–67.

D. Schuyler County; IL–100 (Bluff City), IL–103 and County Hwy–9.

3. Southern Goose Quota Zone: All of Alexander, Jackson, Union and Williamson Counties.

4. Rend Lake Goose Quota Zone: All of Franklin and Jefferson Counties.

5. Other Areas: All of Bond, Christian, Clinton, Coles, Cook, DuPage, Fayette, Kane, Kendall, Lake, McHenry, Moultrie, Perry, Will and Winnebago Counties.

Indiana

All lands and waters within the State of Indiana have been designated for nontoxic shot use.

Iowa

All lands and waters within the State of Iowa have been designated for nontoxic shot use.

Kentucky

1. Bracken and Oldham Counties.

2. Western Zone. That area of western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24-Purchase Parkway junction; northeast on I–24 to the Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion; north on US 60 to the Union County line; northeast and north along the Union County and Henderson County lines to the Indiana-Kentucky border north of Newman, Kentucky.

Louisiana

1. Acadia, Ascension, Assumption, Avoyelles, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, LaFayette, LaFourche, LaSalle, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Union, Vermilion and Vernon Parishes.

Michigan

All lands and waters within the State of Michigan have been designated for nontoxic shot use.

Minnesota

All lands and waters within the State of Minesota have been designated for nontoxic shot use.

Mississippi

All lands and waters within the State of Mississippi have been designated for nontoxic shot use.

Missouri

All lands and waters within the State of Missouri have been designated for nontoxic shot use.

Ohio

1. Ashtabula, Auglaize, Cuyahoga, Delaware, Erie, Geauga, Holmes, Huron, Lake, Lorain, Lucas, Mahoning, Mercer, Ottawa, Pickaway, Sandusky, Summit, Trumbull, Wayne and Wood Counties.

Tennessee

1. Benton, Carroll, Coffee, Crockett, Dyer, Franklin, Gibson, Hamblen, Haywood, Henry, Jefferson, Lake, Lauderdale, Meigs, Obion, Perry, Rhea, Roane, Shelby, Stewart, Tipton, Weakley and Wilson Counties.

Wisconsin

All lands and waters within the State of Wisconsin have been designated for nontoxic shot use.

Central Flyway

Colorado

1. Adams, Alamosa, Boulder, Conejos, Costilla, Larimer, Logan, Morgan, Rio Grande, Sedgwick, Weld and Washington Counties.

2. Hinsdale, Mineral and Saguache Counties east of the Continental Divide.

3. Turk's Pond portion of Baca County.

Kansas

All lands and waters within the State of Kansas have been designated for nontoxic shot use.

Montana

All lands and waters within the State of Montana have been designated for nontoxic shot use.

Nebraska

All lands and waters within the State of Nebraska have been designated for nontoxic shot use.

New Mexico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

North Dakota

All lands and waters within the State of North Dakota have been designated for nontoxic shot use.

Oklahoma

1.A. Bryan, Cleveland, Comanche, Jackson, Johnston, Lincoln, Love, Marshall, Mayes, Nowata, Oklahoma, Payne, Rogers and Washington Counties.

B. Caddo County. That portion of Ellsworth Lake and adjoining City of Lawton property.

C. Canadian County. That portion of Lake Overholster and adjoining Oklahoma City property.

D. That portion of the North Fork of the Red River from Altus lake dam to its confluence with the Red River.

2. That area described within the boundary as follows: South on US 77 from the Kansas border to US 177; US 177 south to State Highway 51; State Highway 51 east to State Highway 97; State Highway 97 north to its junction with unnamed county roadway; northwestward on the county roadway to its junction with State Highway 20; State Highway 20 west to State Highway 18; and State Highway 18 north to the Kansas border. Those portions of Noble and Payne Counties outside of the area described above are designated for nontoxic shot use also.

3.A. Those portions of Cherokee, Haskell, Latimer, Le Flore, McIntosh, Muskogee, Okmulgee, Pittsburg and Wagoner Counties described within the boundary as follows: Interstate 40 from the Arkansas border west to State Highway 82; State Highway 82 north to State Highway 100; State Highway 100 west to State Highway 10A; State Highway 10A west to State Highway 10; State Highway 10 north to State Highway 80; State Highway 80 north to State Highway 251A; State Highway 251A southwest to Muskogee Turnpike; Muskogee Turnpike south to Interstate 40; Interstate 40 west to US Highway 69; US Highway 69 north to US Highway 266; US Highway 266 west to US Highway 62; US Highway 62 south to Indian Nation Turnpike; Indian Nation Turnpike south to US Highway 270; US Highway 270 east to State Highway 2; State Highway 2 north to State Highway 31; State Highway 31 east to State Highway 2; State Highway 2 north to State Highway 9; State Highway 9 to State Highway 9A; and State Highway 9A north and east to the Arkansas border. Those portions of Haskell, McIntosh, Muskogee, Sequoyah and Wagoner Counties outside of the area described above are designated for nontoxic shot use also.

B. Cherokee County. That portion of Ft. Gibson lake and adjoining Federal property.

C. Delaware County. That portion of Spavinaw lake and adjoining City of Tulsa property.

4. All state waterfowl/wetland areas, including:

A. Hajek Marsh in Kingfisher County.
B. Hugo in Choctaw County.
C. Hulah in Osage County.
D. Mt. Park in Kiowa County.
E. Okmulgee in Okmulgee County.
F. Waurika in Jefferson/Stephens County.
G. Wister in Le Flore County.

5. Fort Cobb Lake and all adjoining Federal lands in Caddo County.

6. Salt Plains and Washita National Wildlife Refuges in Alfalfa County and Custer County, respectively.

South Dakota

All lands and waters within the State of South Dakota have been designated for nontoxic shot use.

Texas

1. Baylor, Bosque, Brazos, Burleson, Castro, Collin, Comanche, Deaf Smith, Denton, Eastland, Erath, Hood, Hopkins, Hunt, Moore, Red River, Robertson, Rockwall, Shelby, Smith, Titus, Trinity, Walker, Washington, Wise and Wood Counties.

2. That area lying within boundaries beginning at the Louisiana State line, thence westward along IH 10 to the junction of US Highway 90 and IH 10 in Beaumont, thence westward along US 90 to its junction with IH 610 in Houston, thence north and west along IH 610 to its junction with US Highway 290 in Houston, thence westward along US Highway 290 to its junction with State Highway 159 in Hempstead, thence southwestward along State Highway 159 to its junction with State Highway 36 in Bellville, thence eastward along State Highway 36 to its junction with Farm-to-Market (FM) 2429, thence southward along FM 2429 to its junction with FM 949, thence southwestward along FM 949 to its junction with IH 10, thence westward along IH 10 to its junction with US Highway 77 at Schulenburg, thence southward along US Highway 77 to its junction with the US-Mexico international boundary at Brownsville, thence eastward along the US-Mexico international boundary to the Gulf of Mexico, thence east and seaward to the three marine league limit, thence northeastward along the three marine league limit to the Louisiana State line, thence northward along the Texas-Louisiana State line to its junction with IH 10. Those portions of Austin, Cameron, Colorado, Harris, Jefferson, Kleberg, Liberty, Neuces, Refugio, San Patricio, Waller and Willacy Counties outside of the area described above are designated for nontoxic shot use also.

3. The portions of Cooke, Fannin and Grayson Counties lying within boundaries beginning at the Oklahoma State line, thence southward along I–35 to its junction with US Highway 82 at Gainesville, thence eastward along US Highway 82 to its junction with US Highway 78 at Bonham, thence northward along State Highway 78 to its junction with the Oklahoma State line, thence westward along the Oklahoma-Texas State line to its junction with I–35. That portion of Grayson County lying outside of the area described above is designated for nontoxic shot use also.

4. The portions of Cass, Harrison, Marion, Morris and Upshur Counties lying within boundaries beginning at the Louisiana State line, thence westward along State Highway 49 to its junction with US Highway 259 at Daingerfield, thence southward along US Highway 259 to its junction with State Highway 450 at Ore City, thence eastward on State Highway 450 to its junction with State Highway 154 at Harleton, thence southeastward along State Highway 154 to its junction with US Highway 80 at Marshall, thence eastward along US Highway 80 to its junction with State Highway 43, thence northeastward along State Highway 43 to its junction with FM 2682 at Karnack, thence eastward along FM 2682 to its junction with FM 134, thence southward along FM 134 to its junction with FM 1999 at Leigh, thence eastward along FM 1999 to its function with the Louisiana State line, thence northward along the Louisiana-Texas border to its junction with State Highway 49. That portion of Marion County outside of the area described above is designated for nontoxic shot use also.

5. The portions of Anderson, Henderson and Kaufman Counties lying within boundaries beginning at the junction of State Highway 31 and FM 2661, thence westwardly along State Highway 31 to its junction with US Highway 175 at Athens, thence northwestward along US Highway 175 to its junction with FM 90, thence northward along FM 90 to its junction with FM 1391, thence westward along FM 1391 to its junction with US Highway 175 at Kemp, thence southward along US Highway 175 to its junction with State Highway 274, thence south along State Highway 274 to its junction with State Highway 31 at Trinidad, thence eastward along State Highway 31 to its junction with FM 3441 at Malakoff, thence southward along FM 3441 to its junction with FM 59 at Cross Roads, thence southward along FM 59 to its junction with US Highway 287 at Cayuga, thence southeastward along US Highway 287 to its junction with FM 860, thence northward along FM 860 to its junction with FM 837, thence northeastward along FM 837 to its junction with US Highway 175 at Frankston, then eastward along US Highway 175 to its junction with FM 855, thence northward along FM 855 to its junction with FM 346, thence northward along FM 346 to its junction with FM 344, thence northward along FM 344 to its junction with FM 2661, thence northward along FM 2661 to its junction with State Highway 31. That portion of Henderson County lying outside of the area described above is designated for nontoxic shot use also.

Wyoming

1. Big Horn County: Along and within one mile either side of the waterline of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River and portions of Medicine Lodge Creek and Paintrock Creek where they flow into the Nowood River, beginning from their confluence to where they flow from the mountains.

2. Goshen County: A. North Platte River/Laramie River—Beginning where US 25 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7–108; west along said road to Wyoming Highway 92, west, then north along said highway to US 85; north along said highway to Wyoming Highway 156; west and north along said highway to Goshen County Road No. 7–62; west along said road to the Fort Laramie Canal Road; northwest along said road to Goshen County Road No. 7–48; southwest along said road to the Goshen-Platte County line; north along said line to US 26; and southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7–171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–160; east along said road to Goshen County Road No. 7–166; north along said road to Goshen County Road No. 7–114; east along said road to Wyoming Highway 92; and east along said highway to the point of beginning.

Pacific Flyway

Arizona

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary and Mormon Lake.
2. Hopi Indian Reservation lands in Coconino and Navajo Counties.
3. Navajo Indian Reservation lands in Apache, Coconino and Navajo Counties.
4. Cibola National Wildlife Refuge.

California

1. Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Humboldt, Imperial, Kern, Kings, Marin, Merced, Napa, Riverside, Sacramento, San Joaquin, San Mateo, Santa Clara, Solano, Stanislaus, Sutter, Ventura, Yolo and Yuba Counties.
2. Northeastern Zone. Those portions of Lassen, Plumas, Shasta, Sierra, Siskiyou and Tehama Counties, and all of Modoc County, bounded by the following line: Beginning at I–5 at the Oregon border, south on I–5 to State Highway 89, and southeast on State Highway 89 to State Highway 70, and east on State Highway 70 to US 395, and south on US 395 to the Nevada border.
3. Siskiyou County south of State Highway 89 and west of I–5.

Colorado

1. Montrose County.

Idaho

1. Panhandle Zone. All of Benewah, Bonner, Boundary and Kootenai Counties.
2. Southwestern Zone. All of Ada, Canyon, Gem and Payette Counties. That part of Elmore County lying south and west of I–84, and that part of Owyhee County lying north and east of a line running from the Idaho-Oregon border along State Highway 19, then east on State Highway 19 to US 95 near Homedale, then south and east on US 95 to State Highway 55 west of Marsing, then east on State Highway 55 to State Highway 78 at Marsing, then southeast on State Highway 78 to I–84 Business Highway at Hammett, then east on I–84 Business Highway to I–84 at Cold Springs Creek.
3. Southcentral Zone. All of Gooding, Jerome, Minidoka and Twin Falls Counties.
4. Southeastern Zone. A. The lands within the Fort Hall Indian Reservation boundary in Caribou County;

B. All of Bannock, Bingham, Franklin, Fremont, Jefferson, Madison, Oneida and Power Counties;

C. That part of Bonneville County west of a line running northeast on US 91 to its junction with State Highway 26 approximately five miles northeast of Shelly, then northeast on US 26 to the spot directly above the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then north across the South Fork of the Snake River to the Heise-Archer-Lyman Road (Snake River Road), the northwest on then Heise-Archer-Lyman Road to US 191/20, then north on US 191/20 to the US 191/20-Jefferson County line; and

D. That part of Cassia County within a line running from the Blaine County-Cassia County junction west on the Cassia County line to the Snake River-Raft River confluence, then upstream on the Raft River to I–86, then northeast on I–86 to the Power County line.

Montana

All lands and waters within the State of Montana have been designated for nontoxic shot use.

Nevada

1. Churchill, Douglas and Lincoln Counties.
2. Humboldt Wildlife Management Area in Pershing County.
3. Mason Valley Wildlife Managaement Area in Lyon County.
4. Overton Wildlife Management Area in Clark County.
5. Ruby Lake National Wildlife Refuge in White Pine and Elko Counties.

New Mexico

All lands and waters within the State of New Mexico have been designated for nontoxic shot use.

Oregon

1. Benton, Clatsop, Coos, Columbia, Lincoln, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill Counties.
2. Southcentral Zone—All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395.
3. Malheur County Zone—That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, northwest on I–84 to State Highway 201, south on State Highway 201 to State Highway 19, east on State Highway 19 to the Oregon-Idaho State line and back to the point of origin.
4. Columbia Basin Zone—Those portions of Gilliam, Morrow and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, east on I–84 to US 730, northeast on US 730 to the Oregon-Washington State border, and west along the Columbia River, Oregon-Washington border to point of origin.

Utah

1. Box Elder, Cache, Davis, Salt Lake, Utah and Weber Counties.
2. Navajo Indian Reservation lands in San Juna County.

Washington

1. Western Washington Zone—All areas west of the Pacific Coast National Scenic Trail and west of (and including) the Big White Salmon River in Klickitat County.
2. Columbia Basin Zone—A. Those portions of Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Okanogan and Yakima Counties bounded by the following line: Beginning at the Washington-Oregon State border of the Celilo 1 ridge on US 97, north on US 97 to State Highway 14, east on State Highway 14 to US 395/I–82, north on US 395/I–82 (formerly a continuation of State Highway 14) to Kennewick, west on State Highway 240, north on State Highway 240 to State Highway 24, west on State Highway 24 to US 97, north on US 97 to State Highway 155 at Omak, east and south on State Highway 155 to State Highway 174 at Grand Coulee, southeast on State Highway 174 to US 2, west on US 2 to State Highway 17, south on State Highway 17 to US 395, south on US 395 to US 12, south on US 12 and US 730 to the Oregon border (including the entire McNary National Wildlife Refuge), and west along the Columbia River and the Washington-Oregon border to the point of origin.

B. The portions of Adams, Benton, Franklin, Grant, Lincoln (including the Columbia and Spokane Rivers) and Yakima Counties, not included in the description (A.) above; and all of Spokane and Walla Counties, including the Spokane River and Snake River, respectively.

Wyoming

1. Sweetwater County.

Dated: August 6, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–19302 Filed 8–15–90; 8:45 am]

BILLING CODE 4310–55–M

federal register

Thursday
August 16, 1990

Part VI

The President

Executive Order 12726—Waiver Under the Trade Act of 1974 With Respect to the German Democratic Republic

Presidential Documents

Federal Register
Vol. 55, No. 159
Thursday, August 16, 1990

Presidential Documents

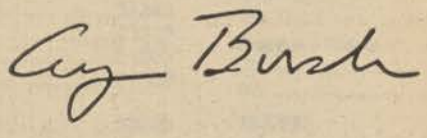
Title 3—

The President

Executive Order 12726 of August 15, 1990

Waiver Under the Trade Act of 1974 With Respect to the German Democratic Republic

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974 (the Act) (19 U.S.C. 2432(c)(2)), which continues to apply to the German Democratic Republic pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of the Act with respect to the German Democratic Republic.



THE WHITE HOUSE,
August 15, 1990.

[FR Doc. 90-19515
Filed 8-15-90; 12:17 pm]
Billing code 3195-01-M

Editorial note: For the President's letter to the Speaker of the House of Representatives and the President of the Senate, dated August 15, on the waiver, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 33).

Reader Aids

Federal Register

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Thursday, August 16, 1990

INFORMATION AND ASSISTANCE

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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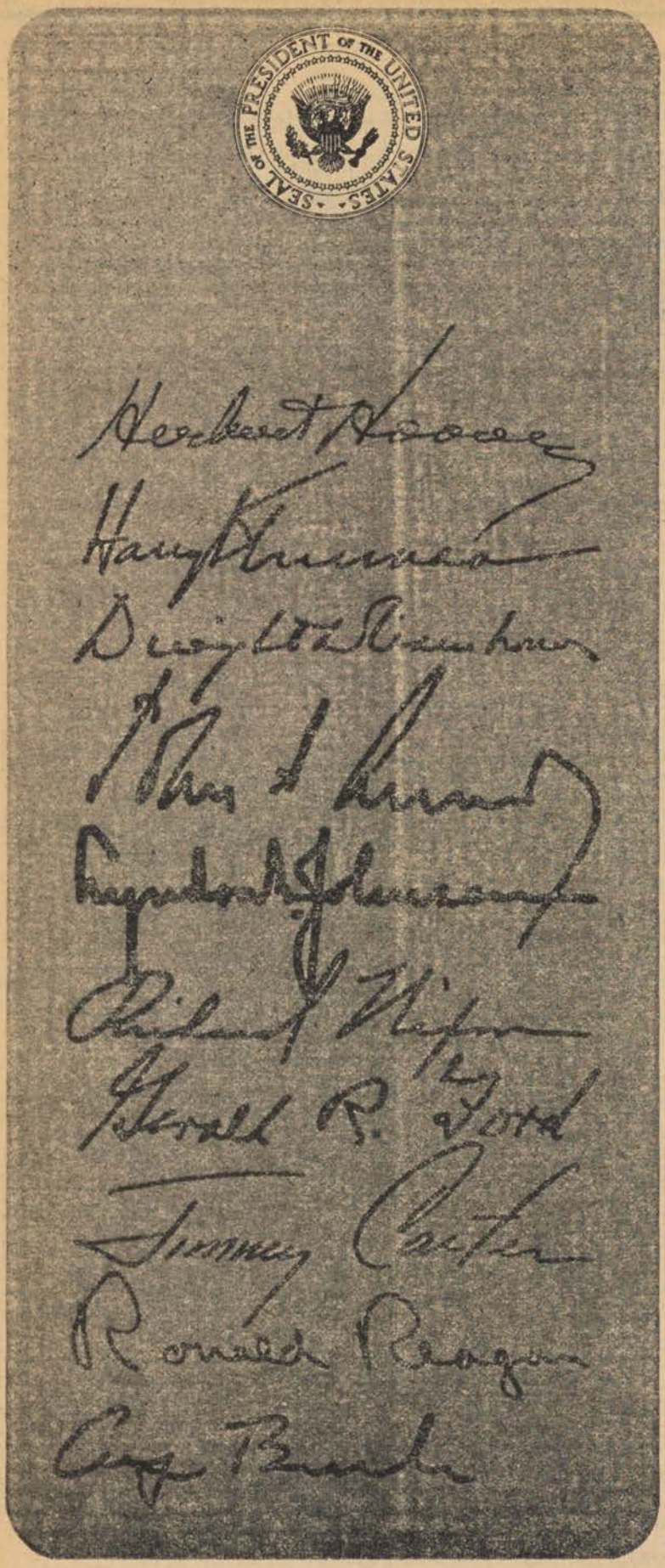

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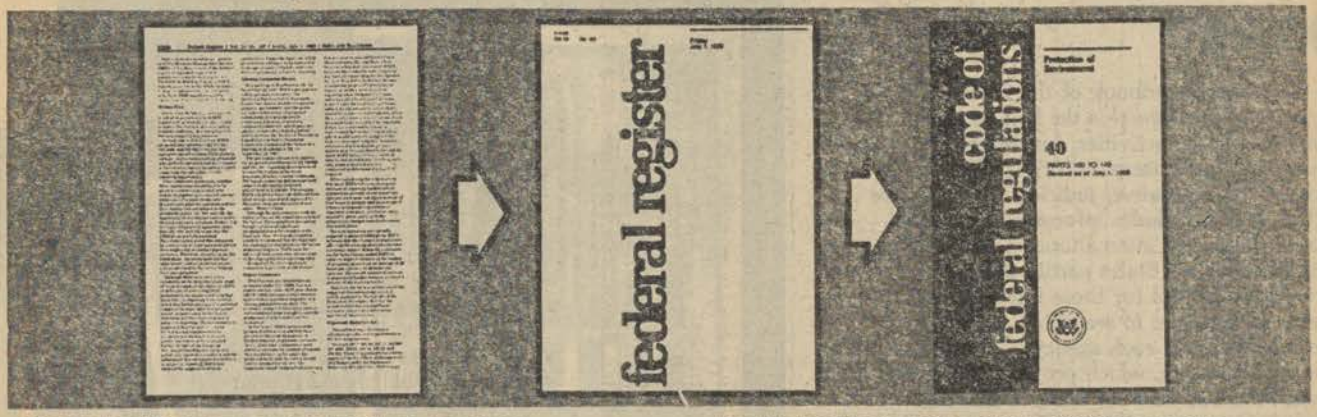

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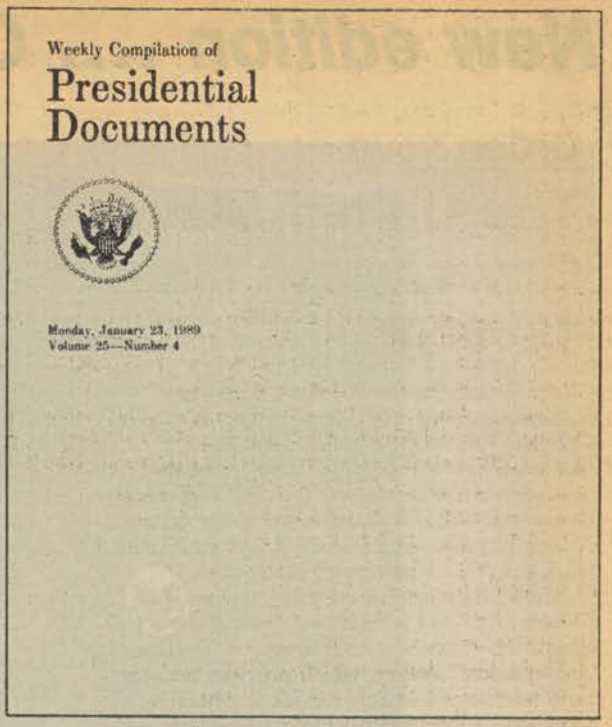

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